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Ontario. Laws, statutes, &c. Municipal law

THE

# MUNICIPAL MANUAL:

CONTAINING THE

## MUNICIPAL AND ASSESSMENT ACTS,

AND

## RULES OF COURT FOR THE TRIAL OF CONTESTED MUNICIPAL ELECTIONS,

**WITH NOTES OF ALL DECIDED CASES,**

SOME ADDITIONAL STATUTES,

AND

## A FULL INDEX.

By ROBERT A. HARRISON, Esq., D.C.L.
*ONE OF HER MAJESTY'S COUNSEL.*

THIRD EDITION.

TORONTO:
COPP, CLARK & CO., PRINTERS, COLBORNE STREET.
1874.

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Entered according to Act of the Parliament of Canada, in the year one thousand eight hundred and seventy-four, by ROBERT A. HARRISON, in the Office of the Minister of Agriculture.

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TO HIS EXCELLENCY

THE HONOURABLE JOHN CRAWFORD, Q.C.

LIEUTENANT-GOVERNOR

OF

THE PROVINCE OF ONTARIO,

THIS NEW EDITION

OF

THE MUNICIPAL MANUAL

IS INSCRIBED,

WITH GREAT RESPECT

BY HIS FORMER PUPIL,

THE EDITOR.

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# PREFACE TO THE THIRD EDITION.

The passing of the Consolidated Municipal Institutions Act by the Legislature of the Province of Ontario last year, rendered it necessary for the Editor to issue a New Edition of the Municipal Manual.

He devoted his vacation of last year to the preparation of the Edition which is now submitted to the Profession and the Public.

He has done his best to make the notes of decided cases full and complete. A comparison of this with the former Editions of the Manual will show that most of the notes have been re-written. The best use possible has been made of all decided cases bearing on the construction of the sections annotated. Two hundred decided cases were noted in the First Edition, published in 1859. Six hundred cases were noted in the Second Edition, published in 1867. And no less than three thousand seven hundred cases have been noted in this the Third Edition.

One feature of the present Edition of the Manual which distinguishes it from the preceding Editions is the copious reference to the decisions of the Courts of the several States of the United States of America. For this the Editor is mainly indebted to the able Treatise on the Law of Municipal Corporations published by Hon. John F. Dillon, LL.D., the Circuit Judge of the United States for the Eighth Judicial Circuit. This Treatise opened up to the Editor such a mine of Municipal wealth that he has not hesitated, with the full permission of Judge Dillon, to avail himself of such of the United States' decisions as appeared to be of interest in this Province. The Editor has given to Judge Dillon a similar privilege so far as the Canadian decisions annotated in this Edition of the Manual are concerned.

In the preparation of this and the former Editions of the Municipal Manual the Editor has acquired considerable experience in Municipal law. This, added to the knowledge acquired in Municipal cases in which he has been engaged in the Courts, qualifies him to some extent to form an opinion as to the value of our Consolidated Municipal and Assessment Acts in comparison with similar Acts in force in other countries. And he hesitates not to say that the Municipal and Assessment Acts of this Province are at present the most complete and most perfect codes of the kind of which he has any knowledge.

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If the Legislature of Ontario could be induced for a few Sessions to refrain from mangling the Acts, so that their provisions would become more generally and better understood, it would be to the public advantage.

Last year the Editor indulged the hope that the book would have been in the hands of subscribers before the end of the year. This hope, owing to causes unnecessary to be detailed, but for which personally he is free from blame, has not been realized. In the meantime, the Legislature of Ontario at its last Session passed important Acts amending both the Assessment and Municipal Acts. The consequence has been that the Editor was obliged to reprint several sheets of the Manual. The amendments made last Session have been noticed, as far as possible, either in the text of the work or the notes. The amending Acts will be found at the end of the Municipal and Assessment Acts respectively. The publication of the amending Acts will afford a check upon the corrections of the Editor. Other Acts of a similar character are at the end of the volume.

The Editor, in the preparation of this Edition, has had the assistance of F. J. Joseph, Esq., and H. C. W. Wethey, Esq., Barristers-at-law. The former relieved the Editor from the labour of verifying the references, correcting the proofs, and passing the work through the press. The latter prepared the very full Index of Cases and Index of Subjects which accompanies the work. Had it not been for the valuable aid received from these two gentlemen, the issue of the New Edition of the Manual would have been much longer delayed than it has been.

TORONTO, ENGLEFIELD,
*5th September*, 1874.

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# PREFACE TO THE SECOND EDITION.

Nine years have elapsed since the publication of the First Edition of this work. During that period the First Edition, which was a very large one, has been exhausted, and during the same period many alterations have been made in the Municipal and Assessment laws of Upper Canada, and many cases decided on the construction of the Acts. Besides, the Municipal and Assessment Acts, as from time to time altered, were, during last Session of Parliament, amended and consolidated.

Some of the alterations and amendments are undoubtedly for good. The office of Councilman for Cities has been abolished, and the number of Aldermen for each Ward increased from two to three, and these, instead of being yearly elected as heretofore, will retire from office annually by rotation. There are two Councillors allowed for each Ward of an Incorporated Village having five Wards, one of whom also retires annually in rotation. Mayors of Cities are no longer chosen by the electors, but by members of the Council from among themselves. On the other hand, Reeves and Deputy Reeves are no longer chosen by Councillors from among themselves, but elected by the people. There may be several Deputy Reeves, in proportion to the number of voters, there being an additional Deputy Reeve allowed for every five hundred additional voters beyond the number required for Reeve and Deputy Reeve. The property qualification of candidates and voters in Cities, Towns and Villages, has been greatly increased. Candidates or voters who have not paid their taxes are disqualified. Provision is made for nomination to offices in Cities, Towns, Incorporated Villages, Police Villages and Townships. Only one day is allowed for polling votes, and in Towns and Cities voters may vote in each Ward in which they are rated for the necessary property qualification. Annual value, in Cities, Towns and Incorporated Villages, has been abolished, and actual value, as in Townships, made the rule of assessment. No Council is allowed, exclusive of School rates, to assess in any one year more than an aggregate of two cents in the dollar on actual value. If, however, in any Municipality, the aggregate amount of the rates necessary for the payment of current annual expenses, and the principal and interest of the debts contracted on or before the 15th August, 1866, on that day exceed the aggregate rate of two cents in the dollar on actual value, the Council may levy such further rates as

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may be necessary to discharge obligations already incurred, but shall contract no further debts until the annual rates required to be levied within the Municipality are reduced within the aggregate rate of two cents. County Treasurers, and not Sheriffs, are now made the proper officers to sell lands for arrears of taxes. The onus of keeping County roads in repair may, under certain circumstances, be thrown upon adjacent Local Municipalities. Besides, Township Municipalities may purchase wild lands from Government, drain, and afterwards sell them. Other changes, of less consequence, unnecessary to be here mentioned, will be found noticed in the proper places throughout the volume.

The value of this Edition of the Manual, as compared with the former one, will be found greatly increased, owing to the number of decided cases to which the Editor, while annotating the Municipal and Assessment Acts, has found it necessary to refer. Whilst in the former Edition reference is made to not more than two hundred, in this Edition reference is made to more than six hundred decided cases. Many points that were left in doubt when the First Edition was published, have since been settled by judicial interpretation. The Editor has in every case, in his notes, given as nearly as possible the very language of the Judges. On some points decisions will be found in apparent conflict, and the Editor has, wherever conflict was apparent, done his best to reconcile the decided cases. But he is happy to say that the conflicts are few; and now that the law has been consolidated, there will be less risk of conflict in the future. With Courts of co-ordinate jurisdiction, and where, as in *quo warranto* cases, single Judges sit without appeal, conflict of opinion and decision can scarcely be avoided. The Editor has endeavoured, under the proper section and in the proper place, to note every decided case bearing on the point under consideration. But, considering the multiplicity of decisions, it is possible that some have been unintentionally omitted. Should any such be discovered by any of his professional brethren, he will only be too happy to be informed of the omission.

Several statutes, bearing on the duties and powers of Municipal bodies, which have been selected from the Consolidated Statutes of Canada, the Consolidated Statutes of Upper Canada, and the Statutes of Canada since the consolidation, are published at the end of the work, preceding the Index. The Editor does not assert that he has published all statutes and parts of statutes directly or indirectly affecting Municipal bodies. Were he to do so, it would be impossible for him to keep his work within reasonable bounds. He has therefore contented himself with a selection of the principal statutes; and in order to accomplish this, has been obliged to exclude from this Edition several Acts of a local and private nature, which are contained in the former

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Edition of the Manual. The omission of the latter will not render the work the less useful to the general body of those who will require to use it, while it has the effect of keeping the volume within a convenient and portable form.

The preparation of the Index, as well as the supervision of the work while passing through the press, was entrusted to Henry O'Brien, Esq., Barrister-at-law, a gentleman who is already favourably known to the Profession as one of the Editors of "The Upper Canada Law Journal" and "The Local Courts Gazette," and Editor of an ably annotated Edition of the Division Courts Act. The Index, which is very full, will, it is hoped, be found all that is necessary to the ready use of the work. Much labour has been bestowed upon it, and, so far as the Editor can judge, it has been carefully compiled.

Imperfections in the work, either on the part of the Editor or of his assistant, are not to be attributed to wilful neglect; but as no such work can be made perfect, the Editor must ask forbearance. Much labour has been expended on it, and it is hoped that it will not only lighten the labour of members of the Legal Profession, but have the effect of expounding and making known the Municipal and Assessment law to the many, not members of the Profession, whose duty it is to give effect to the law, and work under it.

The First Edition of the work received a generous support, as well from the Legal Profession as the great body of the Municipal Councillors and officers of Upper Canada. It is hoped that this Edition, to which the Editor has devoted much thought, will be equally well received. The delays which have occurred in its issue were unavoidable, and to some extent rendered necessary by reason of the Editor's great anxiety to make his work simple in its language and reliable in its exposition of the law. The work is intended not merely for lawyers, but for men unacquainted with the niceties of law. Most of the notes are therefore written in a popular style, and as free as possible from legal phraseology.

ENGLEFIELD, TORONTO,
*26th March*, 1867.

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# PREFACE TO THE FIRST EDITION.

In the Prospectus issued for this work it was said that the Municipal Laws of Upper Canada are in importance second to none of the laws of the Province, and that every Municipal Corporation is a small Parliament, possessed of extensive but yet limited powers. It was then pointed out, that to ascertain in every case the existence or non-existence of a power—the nature of it—its precise limit and the mode in which it should be exercised is the object of all who are in any manner concerned in the administration of Municipal affairs.

When it is considered, that in the first instance these matters are to be determined by Municipal Councils, seldom containing Members versed in the laws, often acting without the aid of Professional advice, the importance of a guide becomes, as said in the Prospectus, manifest.

That guide it has been the aim of the Editor in the following pages to produce. He now proposes as briefly as possible to state upon what principles and in what manner he has performed his task.

The Legislature having, by the Consolidated Act of the present year, classified many Municipal enactments and repealed many of those that were effete or thereby rendered useless, the Editor, with the assistance of legal friends of greater experience than himself, in the first place applied himself to the work of expounding the Consolidated Act by the light of adjudged cases. This he did patiently and assiduously, noting latent difficulties and explaining as far as possible all difficulties of every kind that occurred to him. The result is a body of notes more elaborate than he contemplated when he began his labours. All decisions reported in time for his pen have been carefully epitomized and introduced into the notes so written.

Having in this manner continued his labours until the completion of the Consolidated Act, he next turned his attention to other Acts of a like kind, promiscuously scattered through the twenty-two volumes containing the Provincial Statutes. Beginning at the first Act, he selected in chronological order such Acts as from their nature a person would expect to find in a

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Municipal Manual, until he reached the last Act of the kind now in force. The result is a large collection of Acts and parts of Acts added to the end of the Consolidated Municipal Act.

One great difficulty which the Editor experienced from first to last, was to publish all Acts at all of use to Municipalities, and yet to keep his book in a single volume of moderate dimensions. To accomplish this, Acts have been abbreviated by the omission of mere formal matter, Acts of a private nature and so of little public utility have been in some places abridged by the statement of substance only, and in others nothing has been given except the title or heading, when expressive of the object. Other Acts, such as those regulating the inspection of Beef, Pork, Ashes and the incorporation of Road and other Companies, have, because of their great length and, comparatively speaking, little general utility, been entirely excluded. So have the Common School and Grammar School Acts. The reason of the exclusion of the latter is that they are contained in "The Education Manual," a small work within the reach of all, and it is presumed in the possession of all engaged in the execution of those statutes.

The arrangement adopted has been the chronological, in preference to the analytical; the reason being that by such an arrangement the growth of the law is opened up to public view, while for convenience of reference the addition of a very full Analytical Index imparts to the work all the benefits of analysis. Thus, under Toronto, Kingston, Hamilton, &c., in the Index will be found references to Acts applying specially to these Cities, though published in different parts of the volume. To make the chronological arrangement still more effective, the Editor has, as a rule, in the margin of each statute wherever it is altered or affected by a subsequent statute, made a reference to the subsequent statute. The object of this is to guard against reading any one provision as the only or whole law on the subject, wherever there are others which ought to be read in connection with it.

For the convenience of the Legal Profession as well as for the information of all concerned, the Rules of Court governing contested Municipal Elections have been added in the Appendix and noted in the General Index like other parts of the work. In the Appendix will also be found a form of By-law to contract a debt by borrowing money. The utility not to say necessity of such forms is well known. In the preparation of this Edition of the MUNICIPAL MANUAL, the Editor had neither the time nor the materials to enable him to give a complete set of Municipal Forms. He, however, did what he could towards supplying the void by preparing a form of a By-law of more general use than that of any other form of By-law. His reasons for so doing were two-fold. First, to furnish a model whereby other By-laws may be drawn; and secondly, to furnish a form for that

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By-law, which of all others must essentially be correct both in form and in substance.

Great responsibility rests upon those who undertake to prepare By-laws, on the legality or illegality of which large monied transactions are made to depend. Some form must be observed; and yet a close adherence to technical nicety may in certain cases work positive injustice. Were it possible to secure for money By-laws the stamp of legality, so as to remove all suspicion of informality, irregularity or illegality, the effect would be eminently beneficial. It would beget a spirit of confidence, alike of advantage to the seller and to the buyer of Municipal Debentures. Less room would be left for speculation or trade in the fears of men or contingencies of law, and more stability be imparted to the negotiation of Canadian Municipal Securities; one consequence of which—and not the least—would be, that the market value of all such securities would be proportionably increased. The only mode likely to attain so desirable an end that at present occurs to the Editor, would be to require all By-laws of this kind to be approved by some public functionary, and, when approved, to be unimpeachable on the ground of informality or want of technical accuracy. Such is the principle applied to By-laws passed to raise money on the credit of the Consolidated Revenue Fund. It is enacted, that "no informality or irregularity in any such By-law, or in the proceedings relative thereto, anterior to the passing thereof, shall in any manner affect the validity thereof, after the Governor-General in Council shall have approved of such By-law; but the Order in Council approving such By-law should be held to cover any such informality or irregularity, and the By-law shall be valid to all intents and purposes." (16 Vic. cap. 123, sec. 5.)

It is easy to perceive how efficacious would be this seal of approval, if applied to all money By-laws. The object of it is to secure the confidence of the public. That object is as much needed in the case of any ordinary money By-law, as one to raise money on the credit of the Consolidated Municipal Loan Fund; and if beneficial in the one case, the Editor cannot help suggesting that the benefits ought, by some appropriate machinery, to be extended to all similar cases. Indeed the Legislature have, in other instances, partially affirmed the principle. It is by the Consolidated Municipal Act enacted, that "in case a By-law by which a rate is imposed has been specially promulgated in the manner specified, no application to quash the By-law shall be entertained after six calendar months have elapsed since its promulgation," (sec. 195,) and that "in case no application to quash any By-law so specially promulgated is made within the time limited for that purpose, the By-law, or so much thereof as is not the subject of any such application, or not quashed upon such application, so

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far as the same ordains, prescribes or directs anything within the proper competence of the Council to ordain, prescribe or direct, shall, notwithstanding any want of substance or form, either in the By-law itself or in the time or manner of passing the same, be a valid By-law." (Sec. 200.)

With these observations, the present Edition of the MUNICIPAL MANUAL is submitted to the public. Of the public, the Editor has only one request to make. It is, that imperfections are not to be attributed to neglect, but to circumstances—such as want of time and want of space—over which he, however well disposed, had no control.

QUEEN STREET WEST,
*22nd December*, 1858.

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# CALENDAR.

## JANUARY.

DAY.

1—Taxes or rates considered as imposed or levied from this day. (Sec. 18, Assessment Act.)

Separation of junior and senior Counties to take effect on. (Sec. 43, Municipal Institutions Act.)

15—Last day for Treasurers of Municipalities indebted under the Municipal Loan Fund Acts to make returns to the Provincial Treasurer of the amount of taxable property, debts and liabilities. (Sec. 273, Municipal Act.)

30—Name and address of non-residents to be sent to Clerk before this day.

31—Last day for the Treasurers of all Councils to return to the Provincial Treasurer an account of the debts of the several Corporations. (Sec. 274, Municipal Act.)

Members of Councils (other than County Councils) are elected on the first Monday in January. (Sec. 85, Municipal Act.)

Members of Councils (except County Councils) hold their first meeting at 11 o'clock a. m. on the third Monday in January, or on some day thereafter. (Sec. 167, Municipal Act.)

Members of County Councils hold their first meeting at 2 o'clock p. m., or some hour thereafter, on the fourth Tuesday in January, or on some day thereafter. (*Ib.*)

County Treasurers to prepare and submit to County Councils, at their first meeting in January, a report, certified by the Auditors, of the state of the Non-resident Land Fund. (Sec. 168, Assessment Act.)

## FEBRUARY.

DAY.

1—Last day for Clerk to deliver Assessor names of parties requiring names to be entered on the roll, and lands owned by them. (Sec. 6, Assessment Act.)

Last day for Railway Companies to transmit to Clerks of Municipalities statements of railway property. (Sec. 33, Assessment Act.)

Last day for County Treasurers to furnish to Clerks of Local Municipalities list of lands in arrear for three years. (Sec. 110, Assessment Act.)

Last day for Collector of last year to return roll. (Sec. 103, Assessment Act.)

15—Last day for Assessors to begin to make their rolls. (37 Vic. cap. 19, sec. 8.)

The Commissioner of Crown Lands is required in the month of February to transmit to County Treasurers lists of granted and leased lands. (Sec. 108, Assessment Act.)

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Councils of Townships, Towns and Incorporated Villages, and Police Commissioners in Cities, to pass By-laws as to liquor, &c., during this month. Such By-laws not to be repealed for a year from 1st March. (37 Vic. cap. 32, sec. 8.)

## MARCH.

DAY.

1—Licenses to be dated on 1st. (37 Vic. cap. 32, sec. 5.)

8—Last day for Local Clerks to return to County Clerks the particulars mentioned in sec. 190 of the Municipal Act.

15—Last day for issuing of tavern and shop licenses. (37 Vic. cap. 32, sec. 5.)

31—Last day for Clerks to transmit to Provincial Treasurer the statement required by secs. 191 and 192 of the Municipal Act.

## APRIL.

DAY.

1—Clerks of Municipalities to make return to Provincial Secretary required by Municipal Act, secs. 190, 191, 192.

8—Last day for Local Treasurers to furnish County Treasurers with the statement of arrears of taxes and school rates on non-resident lands afterwards occupied. (Sec. 115, Assessment Act.)

30—Last day for completion of rolls by Assessors. (Sec. 8 of 37 Vic. cap. 19, amending sec. 49, Assessment Act.)

Last day for Clerks to examine rolls for occupation of lands returned as non-resident. (Sec. 113 of Assessment Act.)

Last day in year next following assessment for non-residents to petition complaining of excessive valuation.

## MAY.

DAY.

1—Last day for Assessors to deliver their rolls completed to Clerks of Municipalities. (Sec. 8 of 37 Vic. cap. 19.)

Last day for County Clerks to furnish County Treasurers with lists of non-resident lands that have become occupied or incorrectly described. (Sec. 113 of Assessment Act.)

County Treasurers to complete and balance their books, charging lands with arrears of taxes. (Sec. 122 of Assessment Act.)

Notice of appeal to be given within fourteen days after the 1st.

## JULY.

DAY.

1—Last day for revision of rolls by Courts of Revision. (Sec. 11 of 37 Vic. cap. 19.)

Last day for revision of rolls by County Councils, with a view to equalization. (Sec. 71 of Assessment Act.)

Last day for County Treasurers to return to Local Clerks an account of arrears due in respect of non-resident lands which have become occupied. (Sec. 113 of Assessment Act.)

6—Last day for service of notice of appeal from Court of Revision to County Judge. (Sec. 16 of 37 Vic. cap. 19.)

31—Last day for determination of appeals by County Judge. (Sub-sec. 6 of sec. 16 of 37 Vic. cap. 19.)

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## AUGUST.

DAY.

1—Last day for decision by County Judge in complaint of Municipality complaining of equalization. (Sub-sec. 3 of sec. 71 of Assessment Act.)

14—Last day for County Clerks to notify to Local Municipalities the amounts directed to be levied for County purposes. (Sec. 77 of Assessment Act.)

## SEPTEMBER.

DAY.

1—Last day for jury purposes for Assessors to return their rolls. (Sec. 180 of Assessment Act.)

## OCTOBER.

DAY.

1—Last day for delivery by Clerks to Collectors of Collectors' rolls, unless some other day be prescribed by By-law of the Local Municipality. (Sec. 91, Assessment Act.)

30—Last day for passing By-law fixing day for holding first election in a junior Township. (Sec. 88, Municipal Act.)

## NOVEMBER.

DAY.

1—Last day for transmission by Local Clerks to County Treasurer of copy of non-resident rolls. (Sec. 92, Assessment Act.)

9—Last day for Collectors to demand taxes found due under section 123 of Assessment Act.

## DECEMBER.

DAY.

1—Last day for Council to hear and determine appeals under section 123 Assessment Act.

11—Last day for Clerks to transmit to Provincial Treasurer a return of number of resident ratepayers appearing on the assessment rolls. (Sec. 189 of Municipal Act.)

14—Last day for Collectors to return their rolls, unless later time appointed by Council. (Sec. 103, Assessment Act.)

Last day for payment of taxes by voters in Cities, Towns, Incorporated Villages and Townships passing By-laws for the purpose. (Sec. 109, Municipal Act.)

15—Collectors, in case last mentioned, to return to Treasurer names of all persons who have not paid taxes on or before 14th December. (Sec. 197, Municipal Act.)

20—Treasurers in case last mentioned to transmit to Clerks the names last mentioned. (*Ib.*)

Nomination of candidates for the office of Mayor in Cities, and for Mayor, Reeve and Deputy Reeves in Towns, to take place on the last Monday in December, at 10 a. m. (Sec. 102, Municipal Act.)

Nomination of candidates for the offices of Aldermen in Cities, Councillors in Towns, and of Reeves, Deputy Reeves and Councillors in Townships and Incorporated Villages, to take place at noon on the last Monday in December. (Sec. 104, Municipal Act; 37 Vic. cap. 16, sec. 3.) And in Police Villages, for nomination of Trustees, on same day. (Sec. 487, Municipal Act.)

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THE

# MUNICIPAL MANUAL.

## AN ACT RESPECTING MUNICIPAL INSTITUTIONS IN THE PROVINCE OF ONTARIO (*a*). 36 V. c. 48.

[Assented to 29th March, 1873.]

In order to amend and consolidate the Acts respecting Municipal Institutions; (*b*)

---

*(a)* It has been objected to Statutes, both Imperial and Colonial, that their sections are generally involved in a number of provisos, and filled with a redundancy of words. For the first, the remedy is distinctness of subjects, short clauses, short sentences, and the avoidance of tautology. For the second, the use of the present instead of the future tense, as being a more familiar style of writing, and preventing the frequent use of the word "shall" as a mere auxiliary, expressing the future at one time and obligation or penal consequences at another. (See Coode on Legislative Expression, 42; see also per Wilson, J., in *Snell and Belleville*, 30 U. C. Q. B. 81–90.) The framers of this Act, alive to the nature of such objections, have evidently sought to supply the appropriate remedies. The use of the present instead of the future tense throughout the Act, attests the anxiety of the framers to avoid obscurity. The propriety of this mode of expression depends upon the principle, that in a statute as at common law, the law is at all times supposed to be speaking. The use of the future tense rests upon the principle that a statute speaks at and from the time that it becomes a law, and that so speaking, as it were prospectively, its provisions must be expressed in the future tense. If it be a correct rule that a law speaks at all times as ever operative, the correctness of framing it in the present tense cannot be denied, and this, whether the law is to be applied to present or passing, or to past, or to future events. The effect of reading a statute thus framed is, that the Legislature is regarded as always present—pronouncing the law so long as the law exists—the consequence of which is, that the law meets every event to which it is applicable, as the event arises. (See 31 Vic. cap. 1, s. 6, sub. 1, Ont.)

*(b)* This Act is a consolidation of the 29 & 30 Vic. cap. 51, and of several Acts subsequently passed to amend it. References are generally made at the end of each section to the part of the original Act or Acts of which the section is a copy or consolidation. The language of the original Act is, as nearly as possible, in all cases retained. This is important; for many clauses of the former Acts



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Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

## INTERPRETATION.

Interpretation of words.

**1.** Unless otherwise declared or indicated by the context, whenever any of the following words occur in this Act, the meanings hereinafter expressed attach to the same (*c*) namely :

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have been before the courts, and received a judicial interpretation. Where certain words in an Act of Parliament have received a judicial interpretation in one of the Superior Courts, and the Legislature has repeated the words without alteration in a subsequent statute, the Legislature must be taken to have used them according to the meaning which a court of competent jurisdiction has given to them. (Per Sir W. M. James, L. J., in *Ex parte Campbell in re Cathcart*, L. R. 5 Ch. Ap. 706; see also *Ruckmaboye* v. *Lulloobhoy*, 8 Moore, P. C. 4.) The marginal note to the section of a statute, in the copy printed by the Queen's Printer, forms no part of the statute itself, and is not binding as an explanation or construction of the statute. (*Claydon* v. *Green*, *Green* v. *Claydon*, L. R. 3 C. P. 511.) But apparently the headings of the different portions of the statute may be referred to in order to determine the sense of any doubtful expression in a section ranged under any particular heading. (See *The Directors, &c., of the Hammersmith and City Railway Company and Brand et ux.* L. R. 4 H. L. Cas. 171, *In re Kinnear and Haldimand*, 30 U. C. Q. B. 398; and *The Queen* v. *Currie*, 31 U. C. Q. B. 582.)

(*c*) An interpretation clause in an Act of Parliament should be understood to define the meaning of the word thereby interpreted in cases as to which there is nothing else in the Act opposed to or inconsistent with that interpretation. (*The Midland Railway Company* v. *The Ambergate, Nottingham and Boston and Eastern Junction Railway Company*, 10 Hare, 359.) The meaning of particular words in an Act, in the absence of express definition, is to be found, not so much in a strict etymological propriety of language, nor even in popular use, as in the subject or occasion on which they are used, and the object that is intended to be attained. (Per Abbott, C. J., in *The King* v. *Hall*, 1 B. & C. 136; approved in *The Lion*, L. R. 2 P. C. 525.) Every Act should receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit. (Interpretation Act, Ont. 31 Vic. cap. 1, s. 7, sub. 39.) The intention of the Legislature must be ascertained from the words of the Act, and not from any general inferences to be drawn from the nature of the objects dealt with by the Act. (*Fordyce* v. *Bridges*, 1 H. L. Cas. 1; see also *Logan* v. *Earl Courtown*, 13 Beav. 22.) If the words are of themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. (*Sussex Peerage Case*, 11 Cl. & F. 85.) Each word must be interpreted according to its legal meaning, unless the context show that the Legislature has used it in a popular or more enlarged sense. (*Stephenson* v. *Higginson*, 3 H. L. Cas. 638.) The Act should

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(1.) "Municipality,"—any locality the inhabitants of which are incorporated or are continued, or become so under this Act; "Municipality."

(2.) "Council,"—the Municipal Council or Provisional Municipal Council, as the case may be; "Council."

(3.) "County,"—County, Union of Counties or United Counties, or Provisional County, as the case may be; "County."

(4.) "Township,"—Township, Union of Townships or United Townships, as the case may be; "Township."

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be construed according to the ordinary and grammatical sense of its language, if there be no inconsistency apparent in its provisions. (*Smith* v. *Bell*, 10 M. & W. 378; see also *Phillpott* v. *St. George's Hospital*, 6 H. L. C. 338.) Where the intention of the Legislature can be collected from the Act itself, words may be modified, altered or supplied, so as to obviate any repugnancy to or inconsistency with such intention. (*Quin* v. *O'Keeffe*, 10 Ir. C. L. R. 393; see also *Charlesworth* v. *Ward*, 31 U. C. Q. B. 94.) It is the most natural and genuine exposition of an Act to construe one part by another. (*The Queen* v. *Mallow Union*, 12 Ir. C. L. R. 35.) The general words of a statute are not to be so construed as to alter the previous policy of the law, unless no sense or meaning can be put on the words consistently with the intention of preserving the existing policy untouched. (*Minet* v. *Leman*, 20 Beav. 269; see also *O'Flaherty* v. *McDowell*, 6 H. L. Cas. 142.) In construing Acts which infringe on the common law, the state of the law before the passing of the Act must be ascertained, to determine how far it is necessary to alter the law in order to carry out the object of the Act. (*Swanton* v. *Goold et al*, 9 Ir. C. L. R. 234.) The general law of the country is not to be altered or controlled by partial legislation, made without any special reference to it. (*Denton* v. *Lord Manners*, 4 Jur. N. S. 151, affirmed on appeal, 4 Jur. N. S. 724; see also *Attorney-General* v. *Earl Powis*, 1 Kay, 186.) Difficulties sometimes arise, owing to a conflict between general and particular Acts of Parliament. If the particular Act gives in itself a complete rule on the subject in hand, the expression of that rule would undoubtedly amount to an exception of the subject matter of the rule, not of the general Act. (Per Lord Westbury, in *Ex parte St. Sepulchre's*, 33 L. J. Ch. 372; see also *London, Chatham and Dover Railway Company* v. *Board of Works of Wandsworth District*, L. R. 8 C. P. 185.) In dealing with a statute which proposes merely to repeal a former statute of limited operation, and to re-enact its provisions in an amended form, the court is not necessarily to presume an intention to extend the operation of those provisions to classes of persons not previously subject to them, unless the contrary is shown, but is to determine on the whole statute, considered with reference to the surrounding circumstances, whether such an intention existed. (Per Sir James Colville, in *Brown* v. *McLachlan*, L. R. 4 P. C. 550.) An Act of the local legislature, lawfully constituted in a colony, assented to lawfully on behalf of the Crown, has, as to matters within the competence of the local legislature, the operation and force of sovereign legislation. (*Phillips* v. *Eyre*, 10 B. & S. 1004. See further as to repeal of statutes, notes to sec. 515.)

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"Land." "Lands." "Real Estate." "Real Property."

(5.) "Land," "Lands," "Real Estate," "Real Property,"—respectively, include lands, tenements and hereditaments, and all rights thereto and interests therein;

"Highway." "Road." "Bridge."

(6.) "Highway," "Road," or "Bridge,"—a Public Highway, Road, or Bridge, respectively;

"Electors."

(7.) "Electors,"—the persons entitled for the time being to vote at any Municipal Election, or in respect of any By-law, in the Municipality, Ward, Electoral Division, or Police Village, as the case may be;

"Reeve."

(8.) "Reeve" includes the Deputy Reeve or Deputy Reeves when there is a Deputy Reeve for the Municipality, except in so far as respects the office of a Justice of the Peace;

"Next day."

(9.) The words "next day" are not to apply to or include Sunday or Statutory Holidays;

"Governor."

(10.) "Governor,"—the Lieutenant-Governor or other Administrator of the Government of Ontario. *Vide* 29-30 V. c. 51, s. 422.

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# PART I.

## OF MUNICIPAL ORGANIZATION.

TITLE I.—INCORPORATION.
TITLE II.—NEW CORPORATIONS.

### TITLE I.—INCORPORATION.—Sec. 2-7.

Existing municipal corporations continued.

**2.** The inhabitants of every County, City, Town, Village, Township, Union of Counties, and Union of Townships incorporated at the time this Act takes effect, (*d*) shall continue to

(*d*) The English municipal system and the Canadian system are in many respects widely different. Corporate bodies were, from time to time, by charter and otherwise, constituted in several of the Cities, Towns and Boroughs of England, for the purpose of Municipal Government. These, however, were anything but uniform. In 1835, the 5 & 6 Wm. IV. cap. 76, was passed in order to establish, if possible, a municipal system in England and Wales. Still there were divisions of people into Parishes and Hundreds where there was no incorporation. In some cases the people of the Parishes, though not incorporated, were held liable to persons sustaining injury from acts of misfeasance. In some respects the liability of Corporations, continued or created by this Act, for neglect of duty is identical with

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be a Body Corporate, with the municipal boundaries of every

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the liability of parishes in England. (See the decisions of Wilson, J., in *Wellington* v. *Wilson*, 14 U. C. C. P. 306, and in *Harrald* v. *Simcoe and Ontario*, 16 U. C. C. P. 50-53, and the language of Chancellor Vankoughnet in the last named case in Appeal, 18 U. C. C. P. 13; see also the decision of the Common Pleas in *The Queen* v. *Yorkville*, 22 U. C. C. P. 437, 440.)

"A Corporation is an artificial being—invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality (in the legal sense, that it may be made capable of indefinite duration) and, if the expression may be allowed, individuality—properties by which a perpetual succession of many persons are considered the same, and may act as a single individual. They enable a Corporation to manage its own affairs, and to hold property without the perplexing intricacies, the hazardous and endless necessity of perpetual conveyances for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men in succession with these qualities and capacities that Corporations were invented and are in use. By these means a perpetual succession of individuals are capable of acting for the promotion of the particular object, like one immortal being." (Per Marshall, C. J., in *Dartmouth College* v. *Woodward*, 4 Wheat. 636.)

Words making any Association or number of persons a Corporation or Body Politic and Corporate, vest in the Corporation power to sue and be sued—to contract and be contracted with in their corporate name—to have a common seal, and to alter and change the same at their pleasure; to have perpetual succession, and power to acquire and hold personal property or movables for the purposes for which the Corporation is constituted, and to alienate the same at pleasure, and also vest in any majority of the members of the Corporation the power to bind the others by their acts, and exempt the individual members of the Corporation from personal liability for its debts or obligations or acts, provided they do not contravene the Provisions of the Act incorporating them. (31 Vic. cap. 1, s. 7, sub. 28.)

To consider these powers more in detail.

The *first* in order is "to sue and be sued." A Municipal Corporation, like an individual, under the limitations involved in its constitution and organization, may have recourse to the courts of the country to enforce rights and redress wrongs. So one Municipal Corporation may sue another. (*Huron* v. *London*, 4 U. C. Q. B. 302.) So a Municipal Corporation may be sued for a breach of contract, and in certain cases for wrongful acts not arising out of contract. Thus a Municipal Corporation may be sued for negligence in the construction of a sewer, malfeasance in illegally obstructing a drain or water course, so as to injure the owner or owners of land adjoining, or for wrongfully diverting a stream of water on plaintiff's land. (*Farrell* v. *London*, 12 U. C. Q. B. 343; *Reeves* v. *Toronto*, 21 U. C. Q. B. 157; *Perdue* v. *Chinguacousy*, 25 U. C. Q. B. 61; *Rowe* v. *Rochester*, 29 U. C. Q. B. 590; *Stonehouse* v. *Enniskillen*, 32

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such Corporation respectively then established. 29–30 V. c. 51, s. 1.

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U. C. Q. B. 562.) To support an action against a Municipal Corporation of the nature suggested, although it is not necessary to show any authority under seal to the person or persons who, under the supposed instructions of the Corporation, actually did the wrongful act, something must be shown to connect the Corporation as a body with the doing of the act. (*Farrell* v. *London*, 12 U. C. Q. B. 343.) If the Corporation had a right to do that which they are charged as having wrongfully done, it seems they may plead in general terms that they did the act complained of as they lawfully might for reasons assigned. (*Brown* v. *Sarnia*, 11 U. C. Q. B. 87.)

The *second* power is to "contract and be contracted with." It is a principle applicable to all Corporations, that they must contract under seal. To this principle there are some exceptions. One of some moment has been created with regard to Municipal Corporations. It is that such a Corporation is liable to be sued in an action of debt on simple contract for the price of goods furnished, or labour done at their request and accepted by them. (*Fetterly* v. *Russell and Cambridge*, 14 U. C. Q. B. 433.) Though in such a case there be no contract under seal, the law implies an undertaking by a Corporation to pay for labour and materials employed in their service, and of which they have accepted and are enjoying the benefit, provided the purpose for which the labour and materials have been applied is one clearly within the legitimate object of their charter. (*Bartlett* v. *Amherstburgh*, 14 U. C. Q. B. 152; *Fetterley* v. *Russell and Cambridge*, 14 U. C. Q. B. 433; *Pim* v. *Ontario*, 9 U. C. C. P. 302; *Perry* v. *Ottawa*, 23 U. C. Q. B. 391; *Brown* v. *Belleville*, 30 U. C. Q. B. 373.) The exception, however, does not extend to executory contracts, such as works, &c., *to be* done, but is confined to work in fact done and accepted. (*McLean* v. *Brantford*, 16 U. C. Q. B. 347; *Wingate* v. *The Enniskillen Oil Refining Company*, 14 U. C. C. P. 379; and in this particular the rule is the same both at Law and in Equity, *Houck* v. *Whitby*, 14 Grant, 671.) An individual dealing with a Corporation through its Council or the members of the governing body, is bound to notice the objects and limits of their powers and the manner in which those powers are to be exercised, and it is of much consequence that it should be borne in mind that their acts, when beyond the scope of their authority or done in a manner unauthorized, are in general nugatory and not binding on the Corporation. (*Ramsay et al* v. *Western District*, 4 U. C. Q. B. 374.) Where work was done under a contract not made with the Corporation or any of its known officers, but merely with persons assuming to act as a duly appointed committee, it was held that no action would lie against the Corporation. (*Stoneburgh* v. *Brighton*, 5 U. C. L. J. 38.) No action can be sustained for a breach of duty against the head of a Corporation in not applying the seal to make a contract between a Corporation and an individual, founded on a refusal which (if there had been a previous valid contract) would have constituted a breach of it; in other words, there cannot be a remedy against the head of a Corporation, equivalent to a remedy on the contract against the Corporation, had the contract been duly made so as to create a valid and binding agreement. *Fair* v. *Moore*, 3 U. C. C. P. 484.)

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Heads, officers, by-laws, contracts, &c., continued.

**3.** The head and members of the Council, and the officers, by-laws, contracts, property, assets and liabilities of every Municipal Corporation, when this Act takes effect, shall be deemed the head and members of the Council, and the officers, by-laws, contracts, property, assets and liabilities of such Corporation, as continued under and subject to the provisions of this Act. (*e*) 29–30 V. c. 51, s. 3.

Names of municipal corporations.

**4.** The name of every Body Corporate (not being a Provisional Corporation) continued, or erected under this Act, shall be *The Corporation of the County, City, Town, Village, Township, or United Counties, or United Townships* (as the case may be) *of* (naming the same.) (*f*) 29–30 V. c. 51, s. 4.

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The powers of a Municipal Corporation to have a common seal, to acquire and hold personal property or movables, and alienate the same at pleasure, are too well known and too thoroughly understood to need comment in this place. A Corporation as well as an individual may adopt any seal. It need not declare that the seal is their common seal. (See *Ontario Salt Co.* v. *The Merchants' Salt Co.* 18 Grant, 551.) Proof of the signatures of the attesting officers, if the proper officers of the Corporation, is *prima facie* evidence that the seal was properly affixed. (Per Kinsey, C. J., in *Den* v. *Vreelandt*, 2 Halst. N. J. 352.) The right of a Corporation to acquire, hold and alienate real estate, generally depends upon the special provisions of the statute or charter. The power, when not otherwise provided, of a majority to bind the others by their acts, and also the exemption of individual members of the Corporation from personal responsibility, will engage attention hereafter.

(*e*) See *Corporation of Ludlow* v. *Tyler*, 7 C. & P. 537; *Doe Governors of Bristol Hospital* v. *Norton*, 11 M. & W. 913-928; *Attorney-General* v. *Kerr*, 2 Beav. 420-429; *Attorney-General* v. *Newcastle*, 5 Beav. 314, 315; *Attorney-General* v. *Leicester*, 9 Beav. 546. See further, notes to preceding section.

(*f*) The proper corporate name of a Municipal Corporation ought to be used on all occasions and in all places. But it has been decided that a By-law of a Municipal Council is valid if it appear on the face of it to have been enacted by a Municipal Body having authority to make the By-law under the Municipal laws. (*In re Hawkins* v. *Huron, Perth and Bruce*, 2 U. C. C. P. 72; *Fisher* v. *Vaughan*, 10 U. C. Q. B. 492; *In re Barclay and Darlington*, 11 U. C. Q. B. 470). Slight variances in the use of corporate names, where substantially correct, have been held immaterial even in matters of contract. (*Brock District* v. *Bowen*, 7 U. C. Q. B. 471; *The Trent and Frankford Road Company* v. *Marshall*, 10 U. C. C. P. 336; *Whitby* v. *Harrison*, 18 U. C. Q. B. 603; *Bruce* v. *Cromar*, 22 U. C. Q. B. 321. See also *Mayor and Burgesses of Lynne Regis*, 10 Rep. 120-122; *Mayor of Carlisle* v. *Blamire et al*, 8 East. 487; *The King* v. *Croke*, Cowp. 29.) It was, however, held differently as to the intitling of a rule in a proceeding against a Municipal Corporation. (*In re Sams* v. *Toronto*, 9 U. C. Q. B. 181.) The general rule to be

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Names of provisional corporations.

**5.** The inhabitants of every Junior County, upon a Provisional Council being or having been appointed for the County, shall be a Body Corporate (*g*) under the name of *The Provisional Corporation of the County of* (naming it.) (*h*) 29–30 V. c. 51, s. 5.

Inhabitants of counties, townships, &c., and of cities, towns, &c., to be a body corporate.

**6.** The inhabitants of every County, or Union of Counties erected by proclamation into an Independent County or Union of Counties, and of every Township or Union of Townships erected into an Independent Township or Union of Townships, and of every locality erected into a City, Town, or Incorporated Village, and of every County or Township separated from any Incorporated Union of Counties or Townships, and of every County or Township, or of the Counties or Townships if more than one, remaining of the union after the separation, being so erected or separated after this Act takes effect, shall be a Body Corporate under this Act. (*i*) 29–30 V. c. 51, s. 8.

Corporate powers to be exercised by councils.

**7.** The powers of every Body Corporate under this Act shall be exercised by the Council thereof. (*k*) 29–30 V. c. 51, s. 6.

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collected from the cases is that a variation from the precise name of the Corporation, when the true name is necessarily to be collected from the instrument or is shown by proper averments, will not invalidate a grant by or to a Corporation or a contract with it, and the modern cases show an increased liberality on this subject. (Per Chancellor Kent, in 2 Com. 292; approved in *St. Louis Hospital* v. *Williams*, 19 Mo. 609. See further *President* v. *Myers*, 6 Serg. & Rawle, (Pa.) 12; *Milford Company* v. *Brush*, 10 Ohio, 111; *People* v. *Runkle*, 9 Johns, 147.) A Municipal Corporation has no power to change its name. As the Corporation is the creature of the Legislature, it must retain the name given to it by the Legislature until the Legislature otherwise provide. (See *The Queen* v. *The Registrar of Joint Stock Companies*, 10 Q. B. 839; *Episcopal Charitable Society* v. *Episcopal Church*, 1 Pickering (Mass.), 372. See further, *The King* v. *Norris*, 1 Ld. Raym. 337; *The Queen* v. *Bailiffs of Ipswich*, 2 Ld. Raym. 1232, 1238, 1239.)

(*g*) See note *d* to sec. 2.

(*h*) See note *e* to sec. 3.

(*i*) See note *d* to sec. 2.

*(k)* The Council is not the Corporation, but the legislative and executive body of the Corporation. It fluctuates from year to year, while the corporate body is, as it were, immortal. (See *Harrison* v. *Williams*, 3 B. & C. 162; *The Queen* v. *Paramore*, 10 A. & E. 286; *The Queen* v. *York*, 2 Q. B. 850.) Its powers are limited. (See note *d* to sec. 222.) It has no other powers than such as are expressly granted, or such as are necessary to carry into effect the powers expressly granted. (Per Jewett, J., in *Hodges* v. *Buffalo*, 2 Denio, 112; see also *In re Ross and York*, 14 U. C. C. P. 171.) Until

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## TITLE II.—NEW CORPORATIONS.

DIVISION I.—OF VILLAGES.
DIVISION II.—OF TOWNS AND CITIES.
DIVISION III.—OF TOWNSHIPS.
DIVISION IV.—OF COUNTIES.
DIVISION V.—PROVISIONAL COUNTY CORPORATIONS.
DIVISION VI.—MATTERS CONSEQUENT UPON THE FORMATION OF NEW CORPORATIONS.

### DIVISION I.—OF VILLAGES.

*When a Village may be Incorporated. Sec. 8.*
*Arrangement with respect to Assets and Debts of Townships. Sec. 9.*
*Case of Village partly in two Counties provided for. Sec. 10, 11.*
*Additions to Area Sec. 12.*
*Reductions of Area. Sec. 13.*

When population 750, county council may incorporate as a village, and name place for

**8.** When the census returns of an Unincorporated Village, with its immediate neighbourhood, taken under the direction of the Council or Councils of the County or Counties in which the Village and its neighbourhood are situate, shew that the same contain over seven hundred and fifty inhabitants, and

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the case of *Hodges* v. *Buffalo* was decided, nothing was more frequent in the United States than for city authorities to vote largesses and give splendid banquets for objects and purposes having no possible connection with the growth or weal of the body politic, thus subjecting their constituents to unnecessary and oppressive taxation. (Per Pratt, J., in *Halstead* v. *Mayor of New York*, 3 Comst. 433; see further, *Hood* v. *Lynn*, 1 Allen (Mass.), 103; *Cornell* v. *Guilford*, 1 Denio, 510; *Gerry* v. *Stonehan*, 1 Allen (Mass.), 319; *Claffin* v. *Hopkinton*, 4 Gray, 502; *Tash* v. *Adams*, 10 Cush. 252.) The action of Municipal Corporations is to be held strictly within the limits prescribed by the statute. (See note *t* to sec. 12, and note *d* to sec. 222.) Within these limits they are to be favoured by the courts. (See *Smith* v. *Maddison*, 7 Ind. 86; *Kyle* v. *Malin*, 8 *Ib.* 34, 37.) It is sometimes supposed that members of a Municipal Council exceeding their corporate powers may be held personally liable for their acts. (See *Thomas* v. *Wilson et al*, 20 U. C. Q. B. 331.) But assuming a want of power on the part of the Council, it does not follow that the members of the Council are personally liable on the contract. (*East Nissouri* v. *Horseman*, 9 U. C. C. P. 189.) The fact of an agent entering into a contract without authority does not, *per se*, render him liable on the contract. (*Jenkins* v. *Hutchinson*, 13 Q. B. 744; *Lewis* v. *Nicholson*, 18 Q. B. 503; *Carr* v. *Jackson*, 7 Ex. 382; *Kingsford* v. *Bridges*, U. C. Q. B. Easter Term, 1873.) But an agent assuming to have an authority which he has not, may be sued on an implied contract by him that he had the authority which he professed to have. (Per Jervis, C. J., in *Randell* v. *Trimen*, 18 C. B. 786, 794; *Collen* v. *Wright*, 7 E. & B. 301; 8 *Ib.* 647; *Warlow* v. *Harrison*, 1 E. & E. 295; see also *Simons* v. *Patchett*, 7 E. & B. 568.

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first election, and a returning officer.

when the residences of such inhabitants are sufficiently near to form an Incorporated Village, then on petition, by not less than one hundred resident freeholders and householders of the Village and neighbourhood, of whom not fewer than one-half shall be freeholders, the Council or Councils of the County or Counties in which the Village and neighbourhood are situate shall, by By-law, erect the Village and neighbourhood into an Incorporated Village, apart from the Township or Townships in which the same are situate, by a name, and with boundaries to be respectively declared in the By-law, and shall name in the By-law the place for holding the first election, and the Returning Officer who is to hold the same: (*l*) Provided always, that:

Proviso.

Area of town or village limited.

(1.) No Town or Village incorporated after the passing of this Act, the population of which does not exceed one thousand souls, shall extend over or occupy within the limits of the Incorporation an area of more than five hundred acres of land; (*m*)

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(*l*) This section, so far, is in effect the same as sec. 10 of Con. Stat. U. C. cap. 64, in the 29 & 30 Vic. cap. 51. The power conferred on the Councils is, strictly speaking, a legislative power. Before Confederation the right of the Legislature to delegate such a power to a Municipal body was never questioned. But now that the powers of the Local Legislature are limited by the B. N. A. Act, a question may exist as to the powers of that body to delegate legislative powers to other bodies. The general proposition is that the Legislature is the only body authorized to make laws. But in the United States where, under a written constitution, constitutional questions have been frequent, it has been held competent for the Legislature of a State to delegate to Municipal Corporations the powers to make by-laws affecting only the inhabitants of their several localities. (See *Perdue* v. *Ellis*, 18 Geo. 586; *St. Paul* v. *Coulter*, 12 Min. 41; *Commonwealth* v. *Duquet*, 2 Yeates (Pa.), 493; *State* v. *Clark*, 8 Fost. N. H. 176; *Hill* v. *Decatur*, 22 Geo. 203; *Milne* v. *Davidson*, 8 Martin (La.) 586; *Markle* v. *Akron*, 14 Ohio, 586; *Mayor* v. *Morgan*, 9 Martin (La.), 381; *Metcalf* v. *St. Louis*, 11 Mo. 103; *Strauss* v. *Pontiac*, 40 Ill. 301; *Ashton* v. *Ellsworth*, 48 Ill. 299.) Before Confederation it was usual for the Legislature to delegate legislative powers not only to Municipal bodies but to the Governor in Council. Whether the same can still legally be done has not as yet been questioned since Confederation. The lines between Executive, Legislative and Judicial power are however strictly drawn by the B. N. A. Act. If the Act is to be a success these powers should be as far as possible kept distinct. The exercise of Legislative power by the Executive is just as likely to lead to confusion as the exercise of Executive power by the Legislature. All this kind of legislation is now open to question. See further note *g* to sub. 27 of sec. 384.

(*m*) This subsection is prospective. Provision is made by subsec. 3, for existing Towns and Villages.

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(2.) No Town or Village already or hereafter incorporated and containing a population exceeding one thousand souls, shall make any further addition to its limits or area, except in the proportion of not more than two hundred acres for each additional thousand souls, subsequent to the first thousand; (*n*) Regulations as to enlargement of area.

(3.) In the case of all Towns or Villages now incorporated, whenever the area thereof exceeds the proportionate limit above prescribed, to wit, in all cases where the area exceeds the proportion of five hundred acres for the first thousand souls, and two hundred acres for each subsequent additional thousand, then in all such cases the said Towns or Villages shall not be permitted to make any further addition to their limits, until their population shall have reached such a proportion to their present area; (*o*) Existing towns or villages area of which exceeds proportionate limit prescribed.

(4.) But in all cases, the persons then actually inhabiting the land about to be included within the limits of any Town or Village may, for the purpose of such extension, be held and reckoned as among the inhabitants of such Town or Village; and the land occupied by streets or public squares may be excluded in estimating the area of such Town or Village. (*p*) 29-30 V. c. 51, s. 10, sub. 1-4. How population and area may be reckoned.

**9.** In all cases where an Incorporated Village is separated from the Township or Townships in which it is situate, the provisions of this Act for the disposition of the property, and payments of debts, upon the dissolution of a Union of Townships, shall be applicable as if the localities separated had been two Townships, and the Councils of such Village and Township or Townships shall respectively perform the like duties as by such provisions devolve upon the Councils Disposition of property and payment of debts when incorporated village is separated from township.

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(*n*) This subsection is also prospective. When the population does not exceed one thousand souls, the maximum area allowed is five hundred acres, and by the subsection here annotated, two hundred acres only can be allowed for each additional thousand persons beyond the first thousand.

(*o*) While in the case of existing Towns and Villages no provision is by this subsection made for restricting their existing limits, provision is made as to future increase, &c., that it shall be in the proportions indicated, viz., five hundred acres for first thousand souls, and two hundred acres for each additional thousand.

(*p*) Not for all purposes, but for the purpose of "such extension *only*," which is an expression by no means free from doubt. But, it is apprehended, the design is to exclude such persons from the obligation to pay Town or Village taxes; whether the language used is capable of that construction must be determined by the courts.

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of separated Townships, the said Village being considered as the Junior Township. (*q*) 29–30 V. c. 51, s. 60, sub. 7; s. 64, sub. 1.

When the village lies within two or more counties, village to be annexed to one of them by the county councils or Governor.

**10.** When the newly Incorporated Village lies within two or more Counties, the Councils of the Counties shall, by By-law, annex the Village to one of the Counties; and if within six months after the petitions for the incorporation of the Village are presented, the Councils do not agree to which County the Village shall be annexed, the Wardens of the Counties shall memorialize the Governor in Council, setting forth the grounds of difference between the Councils; and thereupon the Governor shall, by proclamation, annex the Village to one of such Counties. (*r*) 29–30 V. c. 51, s. 11.

In case of failure of councils to act, freeholders, &c., may petition Governor.

**11.** In case the Wardens do not, within one month next after the expiration of the six months, memorialize the Governor as aforesaid, then one hundred of the freeholders and householders on the census list may petition the Governor to settle the matter, and thereupon the Governor shall, by proclamation, annex the Incorporated Village to one of the said Counties. (*s*) 29–30 V. c. 51, s. 12.

Additions to villages by Governor.

**12.** In case the Council of an Incorporated Village petitions the Governor to add to the boundaries thereof, (*t*) the Gover-

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(*q*) See sec. 25 and notes thereto.

(*r*) The annexation is in the first instance left to the County Councils jointly. If they do not pass the necessary By-law within six months from the time the petition for the incorporation is presented, the Wardens are to notify the Lieutenant-Governor in Council thereof, and he is then to cause the annexation by proclamation. The word "Governor" used in this and other sections of the Act is to be taken as meaning "The Lieutenant-Governor or other Administrator of the Government of Ontario." (See sec. 1 sub. 10 of this Act. As to the exercise of delegated legislative powers, see note *l* to sec. 8.)

(*s*) This is a necessary provision, in the nature of a delegated legislative power. (See note *l* to sec. 8.) The previous section provides against neglect or failure to agree on the part of the Counties. In either event, it is made the duty of the Wardens to memorialize the Lieutenant-Governor in Council. But as the Wardens may neglect to do as required of them, power is in that event given by this section to one hundred of the freeholders and householders on the census list to petition the Lieutenant-Governor "to settle the matter." His decision would be final. (See sec. 69 of the Assessment Act, and notes thereto.)

(*t*) Municipal Councils are local governing bodies. The localities over which their jurisdiction extends ought to be certain and well

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nor may, subject to the provisions of subsections one to four of section eight of this Act, by proclamation, add to the Village any part of the localities adjacent, which, from the proximity of the streets or buildings therein, or the probable future exigencies of the Village, it may seem desirable to add thereto. (*u*) 29-30 V. c. 51, s. 13. Proviso.

**13.** The County Council of any County or Union of Counties in Ontario, may, in their discretion, upon the application by petition of the Corporation of any Incorporated Village, whose outstanding obligations and debts do not exceed double the net amount of the yearly rate then last levied and collected therein, by By-law in that behalf, reduce the area of such Village by excluding from it lands used wholly for farming purposes; (*v*) provided that such By-law shall define, by metes and bounds, the new limits intended for such Incorporated Village; (*w*) and provided also, that no Incorporated Village shall by any such change of boundaries be reduced in population below the number of seven hundred and fifty souls; (*x*) and provided further, that the municipal Reducing the area of villages. Proviso. Proviso. Proviso.

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defined. They may pass By-laws for ascertaining and establishing the boundary lines of the Municipality according to law, in case the same has not been done, and for the erection and preservation of durable monuments. (Sub. 25 of sec. 379. See *Cutting* v. *Stone*, 7 Vt. 471; *Gray* v. *Sheldon*, 8 *Ib.* 402; *Pierce* v. *Carpenter*, 10 *Ib.* 480; see also *Hamilton* v. *McNeill*, 13 Gratt. (Va.) 389; *Raab* v. *Maryland*, 7 Md. 483; *Green* v. *Cheek*, 5 Ind. 105; *Elmendorf* v. *New York*, 25 Wend. 693; *People* v. *Carpenter*, 24 N. Y. 86. As to river boundaries, see *Palmer* v. *Hicks*, 6 Johns, 133; *State* v. *Canterbury*, 8 Fost. N. H. 195; *State* v. *Gilmanton*, 14 N. H. 467; *Cold Springs* v. *Tolland*, 9 Cush. 492; *Pratt* v. *State*, 5 Conn. 388; *Hayden* v. *Noyes*, *Ib.* 391; *Re Furman Street*, 17 Wend. 649; *Udall* v. *Trustees*, 19 Johns, 175; *Jones* v. *Soulard*, 24 How, 41; see further note *y* to sec. 13, note *j* to sec. 16, and note *e* to sec. 222.)

(*u*) The power to add to boundaries is one that should exist somewhere. It is, properly speaking, a legislative power. (See note *l* to sec. 8.) But by this section, subject to the provisions of subsec. 1 to 4 of sec. 8 of the Act, it is vested in the Lieutenant-Governor in Council. (See note *r* to sec. 26.)

(*v*) This is the opposite of the power of extension. It, like the power of extension, is, properly speaking, a legislative power. (See note *l* to sec. 8.) But while the latter is vested in the Lieutenant-Governor in Council (see sec. 12, note *u*), the power of contraction is by this section subject to certain checks, after mentioned, vested in the County Council.

(*w*) See note *t* to sec. 12.

(*x*) This is the number made necessary for the incorporation of a Village. (See sec. 8.)

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privileges and rights of such Village shall not thereby be diminished, or otherwise interfered with as respects the remaining area thereof. (*y*) 29-30 V. c. 51, s. 10, sub. 5.

DIVISION II.—OF TOWNS AND CITIES.

*Towns and Cities, how formed and limits. Sec. 14–16.*
*Wards, and additions to Area. Sec. 17–19.*
*Towns, how withdrawn from and re-united to jurisdiction of County. Sec. 20, 21.*

Census of towns and villages.

**14.** A census of any Town or Incorporated Village may at any time be taken under the authority of a by-law of the Council thereof. (*a*) 29-30 V. c. 51, s. 14.

Town containing over 15,000 inhabitants may be erected into a city; and village containing over 2,000 into a town. Conditions

**15.** In case it appears by the census return taken under any such by-law, or under any statute (*b*) that a Town contains over fifteen thousand inhabitants, the Town may be erected into a City; and in case it appears by the return that an Incorporated Village contains over two thousand inhabitants, the Village may be erected into a Town; (*c*) but the change shall be made by means of and subject to the following proceedings and conditions:

1st. Notice to be given.

Firstly—The Council of the Town or Village shall, for three months after the census return, insert a notice in some newspaper published in the Town or Village, or, if no news-

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(*y*) There cannot exist in the same locality two municipal bodies exercising similar powers. Each Municipal Council, no matter what its area, is independent, or ought to be independent, of every other similar Municipal Council. (See *The King* v. *Pasmore*, 3 T. R. 243: *The King* v. *Amery*, 2 Bro. P. C. 336; *Patterson* v. *Society, &c.*, 4 Zabriskie, N. J. 385; *Milne* v. *Mayor*, 13 La. 69; *Hamilton* v. *McNeil*, 13 Gratt. (Va.) 389; *People* v. *Farnham*, 25 Ill. 562.)

(*a*) This and the following sections are designed to facilitate the formation of Villages into Towns and Towns into Cities, whenever the population is sufficiently increased to admit of the changes. (See note *c* to sec. 15.) The census authorized under this section may be taken "at any time." In this respect it differs from a census taken under a statute, which is usually required to be taken at fixed periods. If the necessary population be shown by a census taken under a statute, the necessary action as to formation may also be had. (See sec. 15.)

(*b*) See Dom. Act 33 Vic. cap. 21, as amended by 34 Vic. cap. 18, in respect to the Dominion Census.

(*c*) The population for a Village is..... 750
for a Town ..... 2,000
for a City..... 15,000

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paper be published therein, then the Council shall, for three months, post up a notice in four of the most public places in the Town or Village, and insert the same in a newspaper published in the County Town of the County in which the Town or Village is situate, or if there is no such newspaper, then in the newspaper published nearest to the said Town or Village, setting forth in the notice the intention of the Council to apply for the erection of the Town into a City, or of the Village into a Town, and stating the limits intended to be included therein; (*d*)

2nd. Census returns to be certified, and publication of notice proved.

Secondly—The Council of the Town or Village shall cause the census returns to be certified to the Governor in Council, under the signature of the head of the Corporation, and under the Corporate Seal, and shall also cause the publication aforesaid to be proved to the Governor in Council, then, in the case of a Village, the Governor may, by proclamation, erect the Village into a Town by a name to be given thereto in the proclamation; (*e*)

Village may be made a town by proclamation.

3rd. Existing debts to be adjusted

Thirdly—In case the application is for the erection of a Town into a City, the Town shall also pay to the County of

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(*d*) Two things are here to be observed: first, the contents of the notice; second, the mode of publication. The notice should not only set forth the intention of the Council to apply for the erection of the Village into a Town, or of the Town into a City, but state the limits intended to be included therein. (See note *t* to sec. 12.) The notice should, for three months after the census return, be inserted in some newspaper published in the Village or Town. If no such newspaper, the notice should be posted up for three months in four of the most public places in the Village or Town, *and* inserted in a newspaper published in the County Town, *or*, if no such newspaper as last mentioned, then in *the* newspaper published *nearest* to the Village or Town. (See, as to the notice necessary in the case of the alteration of School boundaries, *Ness* v. *Saltfleet*, 13 U. C. Q. B. 408; *In re Ley* v. *Clark*, 13 U. C. Q. B. 435; *In re Taylor* v. *West Williams*, 30 U. C. Q. B. 346; *Patterson* v. *Hope*, 30 U. C. Q. B. 484; see further sec. 231 of this Act, and notes thereto.)

(*e*) Two things are here made necessary: first, that the census returns should be certified to the Lieutenant-Governor in Council; second, that proof of the publication of the notice referred to in the last note should be adduced to the Lieutenant-Governor in Council. The certificate as to the census must be not only under the seal of the Corporation, but under the signature of the head of the Corporation. No provision is made as to the mode of proof of notice, whether by certificate or affidavit: this is left entirely to the discretion of the Lieutenant-Governor in Council. In the case of the erection of a Town into a City, there must be also proved the settlement of debts between the Town and the County of which it forms a part. (See next subsection.) As to the exercise of delegated legislative powers, see note *l* to sec. 8.

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*In case of a town to be made a city.*

which it forms part, (*f*) such portion, if any, of the debts of the County as may be just, or the Council of the Town shall agree with the Council of the County as to the amount to be so paid, and the periods of payment with interest from the time of the erection of the new City, or in case of disagreement the same shall be determined by arbitration under this Act; (*g*) and upon the Council proving to the Governor in Council the payment, agreement or arbitration, then the Governor may, by proclamation, erect the Town into a City, by a name to be given thereto in the proclamation. (*h*) 29-30 V. c. 51, s. 15.

*Town may be made a city by proclamation.*

*Limits of such new town or city.*

**16.** The Governor may include in the new Town or City such portions of any Township or Townships adjacent thereto and within the limits mentioned in the aforesaid notice (*i*) as, from the proximity of streets or buildings, or the probable future exigencies of the new Town or City, the Governor may consider it desirable to attach thereto. (*j*) 29-30 V. c. 51, s. 16.

*Wards.*

**17.** The Governor may divide (*jj*) the new Town or City into Wards, with appropriate names (*k*) and boundaries, (*l*) but no Town shall have less than three Wards, and no

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(*f*) A City, for municipal purposes, becomes a County in itself. Hence the necessity for the adjustment of the County debt before a separation takes place.

(*g*) See sec. 277 and following sections.

(*h*) Each Municipality should have a name to distinguish it from all other Municipalities. The power is here conferred, not only to create a new Municipality, but to give it a name. The name can only be changed by the Legislature. No Municipal Corporation has power to change its name. (See note *f* to sec. 4.)

(*i*) See note *d* to sec 15.

(*j*) Municipalities being localities, must have boundaries to separate them from other similar localities (see note *t* to sec. 12), and without express legislative authority, Municipal Councils have no power to acquire lands beyond their local limits. (*North Hempstead* v. *Hempstead*, 2 Wend. 131; *Denton* v. *Jackson*, 2 Johns, Ch. 336; *Riley* v. *Rochester*, 9 N. Y. 64; *Chambers* v. *St. Louis*, 29 Mo. 543; *Girard* v. *New Orleans*, 2 La. An. 897; *Concord* v. *Boscawen*, 17 N. H. 465.) As to the exercise of the legislative powers, see note *l* to sec. 8.

(*jj*) See note *l* to sec. 8.

(*k*) See note *h* to sec. 15.

(*l*) See note *t* to sec. 12.

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Ward in any such Town or City less than five hundred inhabitants. (*m*) 29-30 V. c. 51, s. 17.

New division of wards in cities and towns.

**18.** In case two-thirds of the members of the Council of a City or Town do, in Council, (*n*) before the fifteenth day of July in any year, (*o*) pass a resolution (*p*) affirming the expediency of a new division into Wards being made of the City or Town, or of a part of the same, (*q*) either within the existing limits or with the addition of any part of the localities adjacent, which, from the proximity of streets or buildings therein, or the probable future exigencies of the City or Town, it may seem desirable to add thereto respectively, or the desirability of an addition being made to the limits of such City or Town, the Governor may, (*qq*) by proclamation, divide the City or Town or such part thereof into Wards as may seem expedient, and may add to the City or Town any part of the adjacent Township or Townships which the Governor in Council, on the grounds aforesaid, considers it desirable to attach thereto. (*r*) *Vide* 29-30 V. c. 51, s. 19.

Extension of city or town.

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(*m*) This section has no reference to an Incorporated Village. The population of such a village may be no more than 750 (see sec. 8), whereas the minimum population made necessary for a Ward under this section is 500. A Town requires to have 2,000 inhabitants. (See note *c* to sec. 15). But here it is declared that no Town shall have less than three Wards, and no Ward have a less population than 500 inhabitants.

(*n*) This it is apprehended means a majority of two-thirds of the *whole* number of Councillors, and not merely two-thirds of a less number present at the meeting, though the number present be sufficient to form a quorum for ordinary business. (See note *g* to sec. 120.)

(*o*) It ought to be observed that the time is here expressly limited. If the act authorised be done after the time limited, it would, it is apprehended, looking at the subject matter of the section, be a nullity.

(*p*) A Municipal Council ordinarily does public acts through the instrumentality of a By-law. No By-law is, however, here necessary. A formal resolution is all that is required. One difference between a By-law and a resolution is that the former must bear the corporate seal, and the latter need not do so. (See sec. 226 and notes thereto).

(*q*) A change in one or more Wards of a City or Town, without disturbing the remaining Wards, is contemplated.

(*qq*) See note *l* to sec. 8.

(*r*) This admits of tracts of adjacent Townships being added to Cities or Towns and annexed to specific Wards. It would seem to be in the discretion of the Lieutenant-Governor to fix or define the Wards, or make any necessary alterations therein, but it is probable



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Where land attached to town, &c., belonged to another county.

**19.** In case any tract of land so attached to the Town or City belonged to another County, the same shall thenceforward for all purposes cease to belong to such other County, and shall belong to the same County as the rest of the Town or City. (*s*) 29-30 V. c. 51, s. 18.

Town may be withdrawn from jurisdiction of county by by-law on certain conditions.

**20.** The Council of any Town may pass a By-law to withdraw the Town from the jurisdiction of the Council of the County within which the Town is situated, upon obtaining the assent of the electors of the Town to the By-law in manner provided by this Act, subject to the following provisions and conditions: (*t*)

Amount to be paid by town to county for expenses of administration of justice to be settled by agreement or arbitration.

(1.) After the final passing of the By-law, the amount which the Town is to pay to the County for the expenses of the administration of justice, the use of the Gaol, and the erection and repairs of the Registry Office, and for providing books for the same, and for services for which the County shall be liable, as required by and under the provisions of any Act respecting the registration of instruments relating to lands, as well as for the then existing debt of the County, if not mutually agreed upon, shall be ascertained by arbitration under this Act; and the agreement or award shall distinguish the amount to be annually paid for the said expenses, and for the then debt of the County, and the number of years the payments for the debt are to be continued; (*u*)

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that the wishes of the Town or City Council would be complied with by him. It may therefore be important that the resolution should explicitly state the changes or additions deemed expedient by the Council. No published or other notice of the intended application is required.

(*s*) Towns and Cities, for some purposes, continue parts of the County in which situate, (see sec. 20), and this provides for the annexation, for all purposes, of tracts detached under the operation of the foregoing section.

(*t*) The exercise of the powers of the Council is made subject to the assent of the electors, and, even with the assent of the electors, is further subject to the provisions and conditions in this section also contained. The effect of the withdrawal is hereafter explained. (See note *x* to subs. 4 of this section.)

(*u*) The amount to be paid by the Town to the County is made up of the following items:—

1. Expenses of Administration of Justice.
2. Use of the Gaol.
3. Erection and repairs of Registry Office.
4. Books for the same, and for services for which the County is liable, as required by any Act respecting the registration of instruments relating to lands.
5. The then existing debt of the County.

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(2.) In adjusting their award, the arbitrators shall, among other things, take into consideration the amount previously paid by the Town, or which the town may be then liable to pay, for the construction of roads or bridges by the County, without the limits of the Town; and also what the County may have paid, or be liable to pay, for the construction of roads or bridges within the Town; and they shall also ascertain and allow to the Town the value of its interest in all County property, except roads and bridges within the Town; (*v*)

Matters to be considered in settling the same.

(3.) When the agreement or award has been made, a copy of the same, and of the By-law, duly verified by affidavit, shall be transmitted to the Governor, who shall thereupon issue his proclamation withdrawing the Town from the jurisdiction of the Council of the County; (*w*)

Copy of agreement or award to be sent to the Governor. Proclamation.

(4.) After the proclamation has been issued, the offices of Reeve and Deputy Reeve or Deputy Reeves of the Town shall cease; and no By-law of the Council of the County thereafter made shall have any force in the Town, except so far as relates to the care of the Court House and Gaol, and other County property in the Town; and the Town shall not thereafter be liable to the County for, or be obliged to pay to the County, or into the County Treasury, any money for County debts or other purposes, except such sums as may be agreed upon or awarded as aforesaid; (*x*)

Effect of such proclamation.

(5.) After the lapse of five years from the time of the agreement or award, or such shorter time as may be stated in the agreement or award, a new agreement or a new award

New agreement or award after five years.

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(*v*) The rule laid down is a fair one. Where the Town has contributed towards building roads or bridges outside of its limits, credit is to be given; but when the roads, &c., are within the limits, it is to be debited with a fair proportion of the outlay. In addition, the Town is to receive credit for the value of its interests in all County property, except roads and bridges within the Town.

(*w*) There is no time limited in any year within which the application to the Lieutenant-Governor is to be made.

(*x*) The effects of withdrawal are here explained.

1. The offices of Reeve and Deputy-Reeve, necessary only as representatives of the Town in the County Council, are to cease.

2. No By-law of the County (except so far as relates to the care of the Court House and Gaol, and other County property in the Town) is to have any force in the Town.

3. The Town is not to be liable to the County for, or be obliged to pay into the County Treasury, any moneys (except as agreed upon or awarded) for County debts or other purposes.

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may be made, to ascertain the amount to be paid by the Town to the County for the expenses of the administration of justice, the use of the Gaol, erection and repairs of the Registry Office or Offices, and for providing books for the same, and for services for which the County shall be liable, as required by and under the provisions of any Act respecting the registration of instruments relating to lands; (*y*)

Property after withdrawal.

(6.) After the withdrawal of a Town from the County, all property theretofore owned by the County, except roads and bridges within the Town, shall remain the property of the County. 29-30 V. c. 51, s. 26, *as amended* by 31 V. c. 30, ss. 2 & 3. (*z*)

Town may, after five years from withdrawal, pass By-law for re-union with County

Proviso that By-law shall have no effect until ratified by Council of County, &c.

**21.** The Council of any Town which has withdrawn from a County, or Union of Counties, (*a*) may, after the expiration of five years from such withdrawal, pass a By-law, to be assented to by the electors in manner provided for by this Act in respect of By-laws for creating debts, to re-unite with such County or Union of Counties: (*b*) Provided that the said By-law shall have no effect unless ratified and confirmed by the Council of the County or Union of Counties from which the said Town had previously withdrawn, within six months after the passing of the said By-law; (*c*) and unless the terms and conditions which the Town shall pay, perform or be subject to, shall have been previously agreed upon or

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(*y*) Most of the services mentioned are County Services, in which the Town, though withdrawn from the County, must be continuously interested. But the nature and value of the services may from year to year vary; hence provision is made for a settlement every five years, unless a shorter time be stated in the agreement or award last made.

(*z*) This applies to a Town Hall and other similar property. All real property of the County, with the exceptions named, continue the property of the County notwithstanding the withdrawal. The only exceptions are "roads and bridges" *within* the Town. Bridges between the Town and adjoining municipalities stand on a different footing.

(*a*) See sec. 20.

(*b*) This is a new provision. In some cases it has been found that the withdrawal of a Town from the jurisdiction of the County in which situate, was not to the pecuniary advantage of the Town. But until this provision there could not be a re-union without an Act of Parliament. (See note *l* to sec. 8.)

(*c*) It is in the power of a Town to withdraw from a County without the assent of the County. But after withdrawal there can be no restoration of the union in the absence of mutual assent. That assent is to be signified by the passing of By-laws by each of the

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settled in manner following—that is to say, (*d*) before the said By-law shall be confirmed by the Council of the County—the Councils of the Town and County shall determine by agreement the amounts of the debts of the Town and County respectively which shall be paid or borne by the County after the re-union, or what amount shall be payable by a special rate to be imposed upon the ratepayers of the Town, on and above all other County rates, and all other matters relating to property, assets, or advantages consequent upon such re-union, and as affecting the County or Town respectively; and such other terms or conditions as may appear just shall be settled by such agreement; and in default of such agreement being come to within three months after the passing of the By-law by the Council of the town, then the said matters shall be settled by arbitration, as provided by this Act. (*e*)

And before By-law ratified, the amounts of the debts of Town and County respectively shall be determined.

## Division III.—Of Townships.

*Townships, how formed. Sec. 22.*
*Junior Township, when it may become a separate Corporation. Sec. 23, 24.*
*Arrangement of Joint Assets and Debts. Sec. 25.*
*Adjacent Tracts, Annexation of. Sec. 26, 27.*
*New Townships, Union of. Sec. 28, 30.*

**22.** In case a Township be laid out by the Crown in territory forming no part of an Incorporated County, the Governor may by proclamation annex the Township, or two or more of such Townships lying adjacent to one another, to any adjacent Incorporated County, and erect the same into an Incorporated Union of Townships with some other Township of such County. (*f*) 34 V. c. 30, s. 17.

New townships beyond limits of incorporated county may be attached to a county by proclamation.

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municipal bodies interested. The By-law of the County, to be operative, must be passed within six months after the passing of the By-law of the Town. The initial proceeding is to be had by the Town.

(*d*) The withdrawal could only take place after certain financial arrangements made to the satisfaction of both parties, or, if unable to agree, by arbitration. (See sec. 20.) The re-union is also made to depend upon a settlement of the financial matters specified.

(*e*) See sec. 277, and following sections.

(*f*) The ordinary Municipal Divisions are Counties, Townships, Towns, and Villages. Of these the County is the major municipality, composed of the smaller or minor municipalities. Apart

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Junior township containing 100 freeholders, &c., may be separated from union.

**23.** When a Junior Township of an Incorporated Union of Townships has one hundred resident freeholders and householders on the Assessment Roll as last finally revised and passed, such Township shall, upon the first day of January next after the passing of the proper By-law in that behalf by the County Council, become separated from the Union. (*g*) *Vide* 29-30 V. c. 51, s. 28.

In what cases junior township containing 50 freeholders, &c., but less than 100, may be separated from union.

**24.** In case a Junior Township has at least fifty, but less than one hundred resident freeholders and householders on the last revised Assessment Roll, and two-thirds of the resident freeholders and householders of the Township petition the Council of the County to separate the Township from the Union to which it belongs; and in case such Council considers the Township to be so situated, with reference to streams or other natural obstructions, that its inhabitants cannot conveniently be united with the inhabitants of an adjoining Township for municipal purposes; such Council may, by By-law, separate the same from the Union; (*h*) and the By-law shall name the Returning Officer who is to hold, and the place for holding, the first election under the same; (*i*)

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from the Townships, Towns, and Villages, the County has no local existence. But covering as it does the smaller municipalities, it, through its Council, exercises certain superior powers over them. The municipal scheme requires that every Township should belong to some County. The object of this section is to annex a Township or Townships, territorially out of any County, to some adjacent County for municipal purposes. The power, which is a legislative one, has been conferred on the Lieutenant-Governor in Council. (See note *l* to sec. 8.)

(*g*) When the Junior Township attains the required population, the separation is to take place after the passing of the necessary By-law by the County Council. This is a delegated legislative power. (See note *l* to sec. 8.)

(*h*) It is the rule to have at least one hundred resident freeholders and householders on the last roll, as finally revised, in order to constitute a separate Township, and to have Townships of a less number of inhabitants united. The exception which may be created by this section is where a Township having at least fifty resident freeholders and householders is so situate, with reference to streams or other natural obstructions, that its inhabitants cannot be conveniently united with the inhabitants of an adjoining Township. In such case, if there be a petition to the County Council from two-thirds of the resident freeholders and householders of the Township, setting forth the above facts and praying for separation, and the Council of the County considers the prayer of the petition well grounded, a By-law may be passed for the purpose, and thereby a separation be effected. This also is a legislative power. (See note *l* to sec. 8.)

(*i*) A separate Returning Officer is a necessary consequence of a separation. For this reason the By-law which effects the separation

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or in case two-thirds of the resident freeholders and householders of one or more Junior Townships petition the Council of the County to be separated from the Union to which they belong, and to be attached to some other adjoining Municipality, and in case said Council consider the interest and convenience of the inhabitants of such Township or Townships would be promoted thereby, they may, by By-law, separate such Township or Townships from said Union, and attach them to some other adjoining Municipality. (*j*) 31 V. c. 30, s. 4.

Disposition of property upon dissolution of township unions.

**25.** After the dissolution of a Union of Townships, the following shall be the disposition of the property of the Union: (*k*)

(1.) The real property of the Union situate in the Junior Township shall become the property of the Junior Township;

(2.) The real property of the Union situate in the remaining Township or Townships of the Union shall be the property of the remaining Township or Townships; (*l*)

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must name the Returning Officer, and appoint the place for holding the first election.

(*j*) This section may be conveniently divided into two parts. The first provides for the separation from a Union of a Township so situated, with reference to streams or other natural obstructions, that its inhabitants cannot conveniently remain in the Union or be attached to any other Union, in which case provision is made under certain restrictions for a separate municipal existence. The latter part of the section provides for the detachment of a Township or Townships from one Union, and its annexation to another Township or Union where the County Council, upon petition, considers that the interest and convenience of the inhabitants would be thereby promoted.

(*k*) As to the necessity for some such provisions as the following in regard to the disposition of property, in the event of the division of a municipality, see *Richland County* v. *Lawrence County*, 12 Ill. 1; *Blackstone* v. *Taft*, 4 Gray, 250; *North Yarmouth* v. *Skillings*, 45 Maine, 133; *Minot* v. *Curtis et al*, 7 Mass. 441; *Cobb* v. *Kingman et al*, 15 Mass. 197; *People* v. *Morrell*, 21 Wend. 563; *State* v. *Hartshorn*, 17 Ohio, 135; *State* v. *Jacobs*, *Ib.* 143; *Gorham* v. *Springfield*, 21 Maine, 61; *Brewster* v. *Harwich*, 4 Mass. 278; *Randolph* v. *Braintree*, *Ib.* 315; *Windham* v. *Portland*, *Ib.* 384; *Harrison* v. *Bridgeton*, 16 Mass. 15 *Ib.* 75; *Lakin* v. *Ames et al*, 10 Cush. 198; *Plunkett Township* v. *Crawford*, 27 Pa. St. 107; *New London* v. *Montville*, 1 Root. (Conn.) 184.

(*l*) The situation of the real property is made to govern its ownership. If in the Junior Township, it becomes the property of the Junior Township; if in the remaining Township or Townships, it becomes the property of such Township or Townships. This is the

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(3.) The two Corporations shall be jointly interested in the other assets of the Union, and the same shall be retained by the one, or shall be divided between both, or shall be otherwise disposed of, as they may agree; (*m*)

Arrangement as to debts.

(4.) The one shall pay or allow to the other, in respect of the said disposition of the real and personal property of the Union, and in respect to the debts of the Union, such sum or sums of money as may be just; (*o*)

How to be determined, in case of disagreement.

(5.) In case the Councils of the Townships do not, within three months after the first meeting of the Council of the Junior Township, agree as to the disposition of the personal property of the Union, or as to the sum to be paid by the

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rule which was held to apply, by the Supreme Court of New York, to the division of a Municipality, in the absence of express provision to the contrary. (*North Hempstead* v. *Hempstead*, 2 Wend. 109; see further, *Milwaukee* v. *Milwaukee*, 12 Wis. 93.) The *situs* of real property as between Municipalities, in the event of a dissolution of the Union formerly existing, determines its ownership. But, as regards property other than real property, more difficulty exists. (See *Windham* v. *Portland*, 4 Mass. 384; *Hartford Bridge* v. *East Hartford*, 16 Conn. 149; s. c. 10 How. (U. S.) 511; *Hampshire* v. *Franklin*, 16 Mass. 75.)

(*m*) The assets of the Union may consist either of real or personal property, or of both. The disposition of the real property is provided for in the preceding subsections. Its *situs* determines its ownership. But as regards assets other than real property, its disposition is necessarily made to depend on the agreement of the Townships.

(*o*) So long as the Townships remain united, they constitute one Municipality, as much as the various Wards of a City constitute one Municipality; but when United Townships separate, there are matters which require adjustment, according to what is right and fair, between the parties. It is in the division and disposal of the property, and in the provisions which the liabilities of the Union may require, that on the dissolution one may have to pay to the other such sum of money as may be just. This amount is, in the first instance, if possible to be determined by mutual agreement. On the separation of three Townships into two Municipalities, the two Corporations executed an instrument whereby one agreed to pay to the other a certain sum, as soon as certain non-resident rates theretofore imposed should become available. It was subsequently discovered that these rates had been illegally imposed, and that the supposed fund would never be available. Its supposed existence had been an element in determining the amount to be paid. It was held that the Corporation to which the money was made payable was not entitled to have the agreement reformed so as to make the money payable by the other absolutely. (*Arran* v. *Amabel*, 17 Grant, 163, reversing s. c. 15 Grant, 701.)

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one to the other, or as to the times of payment thereof, the matter shall be settled by arbitration under this Act; (*p*)

(6.) The amount so agreed upon or settled shall bear interest from the day on which the Union was dissolved, and shall be provided for by the Council of the indebted Township like other debts. (*q*) 29-30 V. c. 51, s. 60, sub. 1-6.

Amount agreed to be paid shall bear interest.

**26.** The Governor may, (*qq*) by proclamation, annex to any Township, or partly to each of more Townships than one, any gore or small tract of land lying adjacent thereto and not forming part of any Township, and such gore or tract shall thenceforward for all purposes form part of the Township to which it is annexed. (*r*) 29-30 V. c. 51, s. 30.

The Governor may annex gores to adjacent townships.

**27.** In case a Township be laid out by the Crown in an Incorporated County or Union of Counties, or in case there is any Township therein not incorporated and not belonging to an Incorporated Union of Townships, the Council of the County or United Counties shall, by By-law, unite such Township for municipal purposes to some adjacent Incorpo-

New townships, &c., within the limits of incorporated counties, to be united to adjacent townships, and how.

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(*p*) So far as the Act directs a distribution of property, the Act must be followed. The Corporations cannot of themselves make an arrangement contrary to the Act of Parliament, but in matters where the Act is silent as to the particular division of property or adjustment of assets, it is in the power of the Corporation, by amicable arrangement or through the medium of an arbitration, to adjust the same. (See *Wellington* v. *Wilmot*, 17 U. C. Q. B. 71.)

(*q*) In the absence of an agreement to the contrary, the rate of interest would be six per cent. per annum. (See sec. 8 of Con. Stat. Can. cap. 58.) This is besides the rate of interest to be paid when a balance is found due by one County to another after a separation. (See sec. 41.)

(*qq*) See note *l* to sec. 8.

(*r*) No provision is here made for ascertaining the will of the people to be affected by the change. The power given is absolute. But as it is vested in the Lieutenant-Governor in Council, it is presumed that the exercise of it will be in accordance with the will of the people. By means of its exercise, the inhabitants of the tract of land annexed will be subjected to liabilities of the Municipality of which it shall be made a part; for the provision is, that it "shall thenceforward, for *all purposes*, form part of the Township to which it is annexed." (See *Powers* v. *Wood County*, 8 Ohio St. 285; *Layton* v. *New Orleans*, 12 La. An. 515; *Arnoult* v. *New Orleans*, 11 *Ib.* 54; *Gorham* v. *Springfield*, 21 Maine, 58; *St. Louis* v. *Allen*, 13 Mo. 400; *Railroad Company* v. *Spearman*, 12 Iowa, 112; *Wade* v. *Richmond*, 18 Gratt (Va.) 583; *Norris* v. *Mayor, &c.*, 1 Swan (Tenn.) 164; *Elston* v. *Crawfordsville*, 20 Ind. 272; *Girard* v. *Philadelphia*, 7 Wall, 1; *Blanchard* v. *Bissell*, 11 Ohio St. 96; *The Queen* v. *The Local Government Board*, L. R. 8 Q. B. 227.)

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rated Township or Union of Townships in the same County or Union of Counties. (*s*) 29-30 V. c. 51, s. 31.

Townships not incorporated or united may be formed into unions, and how.

**28.** In case of there being at any time in an Incorporated County or Union of Counties two or more adjacent Townships not incorporated and not belonging to an Incorporated Union of Townships, and in case such adjacent Townships have together not less than one hundred resident freeholders and householders within the same, the Council of the County or Union of Counties may, by By-law, form such Townships into an independent Union of Townships. (*t*) 29-30 V. c. 51, s. 32.

Seniority of townships, how regulated.

**29.** Every proclamation or By-law forming a Union of Townships shall designate the order of seniority of the Townships so united; and the Townships of the Union shall be classed in the By-law according to the relative number of freeholders and householders on the last revised Assessment Roll. (*u*) 29-30 V. c. 51, s. 34.

Townships in different counties.

**30.** In case the United Townships are in different Counties, the By-law shall cease to be in force whenever the Union of the Counties is dissolved. (*v*) 29-30 V. c. 51, s. 33.

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(*s*) There are in some Counties tracts of land not surveyed or laid out in Townships, and this section requires the County Council of any such County to unite new Townships when laid out with some adjacent Township or Townships, in order that the inhabitants may at once enjoy Municipal rights and be subject to Municipal liabilities. (See note *j* to sec. 16.) This provision is made in lieu of an Act of Parliament, which would be otherwise necessary in such a case. (See note *l* to sec. 8.)

(*t*) Under this section Unions may be formed of two or more *new* Townships, instead of annexing them to *old* Townships. This can only be done when the joint population of resident freeholders and householders is not less in number than one hundred. The power is a delegated legislative power. (See note *l* to sec. 8.)

(*u*) The order of seniority of United Townships is to be declared in the proclamation or By-law, as the case may be, and the seniority is to be governed by population, so that the more populous Township is to be the Senior Township.

(*v*) No case can arise under this section, unless the Union have been made by the Council of United Counties of Townships in different Counties of the Union. When such has been done, and the Counties afterwards become separated, provision is made for the separation of the United Townships. The fact that the By-law is in such an event to "cease to be in force," as near as may be restores the Townships to the situation in which they were before the By-law passed. (See notes *c* and *d* to sec. 515 of this Act.)

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DIVISION IV.—OF COUNTIES.

*Counties, how formed.* *Sec. 31.*
*Seniority of.* *Sec. 32.*
*Venue in Judicial Proceedings.* *Sec. 33.*

New counties, how formed by proclamation, and annexed or united.

**31.** The Governor may, by proclamation, form into a new County any new Townships not within the limits of an Incorporated County, and may include in the new County one or more Unincorporated Townships, or other adjacent unorganized territory (defining the limits thereof) not being within an Incorporated County, and may annex the new County to any adjacent Incorporated County; or in case there is no adjacent Incorporated County, or in case the Governor in Council considers the new County, or any number of such new Counties lying adjacent to one another, and not belonging to any Incorporated Union, so situated that the inhabitants cannot conveniently be united with the inhabitants of an adjoining Incorporated County for municipal purposes, the Governor may, by the proclamation, erect the new County, or new adjacent Counties, into an independent County or Union of Counties for the said purposes, and the proclamation shall name the new County or Counties. (*a*) 29-30 V. c. 51, s. 35.

Seniority of united counties, how regulated.

**32.** In every Union of Counties, the County in which the County Court House and Gaol are situate shall be the Senior County, and the other County or Counties of the Union shall be the Junior County or Counties thereof. (*b*) 29-30 V. c. 51, s. 36.

Laws applicable to union of counties.

Venue.

**33.** During the Union of Counties, all laws applicable to Counties (except as to representation in Parliament and registration of titles) shall apply to the Union as if the same formed but one County, (*c*) and in any civil judicial proceeding the venue shall be so laid. (*cc*) 29-30 V. c. 51, ss. 37 & 38.

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(*a*) The provisions of this section were originally taken from sec. 35 of Con. Stat. U. C. cap. 54. They facilitate the formation of Counties and Unions of Counties in newly-organized tracts of land, without the necessity of legislative intervention. (See note *l* to sec. 8.)

(*b*) There is not only seniority among United Townships, but seniority among United Counties. While among the former seniority is to be determined by population, (see sec. 29,) among the latter it is to be determined by the situation of the County Court House and Gaol.

(*c*) Improvements, however, may, under certain circumstances, be made by either County separately. (See secs. 397-401, inclusive.)

(*cc*) A declaration laying the venue in the United Counties of, &c., (not naming the particular County) was, before the C. L. P. A.,

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DIVISION V.—OF PROVISIONAL COUNTY CORPORATIONS.

*Provisional Corporations, formed by separation from Junior County. Sec. 34.*
*Provisional Officers. Sec. 35, 36.*
*Property may be acquired for Gaol and Court House. Sec. 37.*
*Their powers not to interfere with United Corporations. Sec. 38.*
*Arrangement of Joint Assets and Debts. Sec. 39–41.*
*Officials, when appointed. Sec. 42.*
*Separation, when complete. Sec. 43, 44.*
*Judicial Proceedings on Separation. Sec. 45–50.*

Separation of united counties.

**34.** When the census returns, taken under a Statute, or under the authority of a By-law of the Council of any United Counties, show that the Junior County of the Union contains seventeen thousand inhabitants or more, then if a majority of the Reeves and Deputy Reeves of such County do, in the month of February, pass a resolution affirming the expediency of the County being separated from the Union; and if, in the month of February in the following year, a majority of the Reeves and Deputy Reeves transmit to the Governor in Council a petition for the separation, and if the Governor deems the circumstances of the Junior County such as to call for a separate establishment of Courts and other County institutions, he may, by proclamation setting forth those facts, constitute the Reeves and Deputy Reeves in that County a Provisional Council, and in the proclamation appoint a time and place for the first meeting of the Council, and therein name one of its members to preside at the meeting, and also therein determine the place for and the name of the County Town. (*d*) 29-30 V. c. 51, s. 39.

Appointment by proclamation of provisional council in junior county.

Meeting thereof.

County town.

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held bad on special demurrer. (*Nelson Road Co.* v. *Bates*, 4 U. C. C. P. 281.) And if now persisted in, would, probably, be held bad on general demurrer. (See *Bank of Upper Canada* v. *Owen*, 26 U. C. Q. B. 154.) A writ of summons was sued out before the separation of the County of Ontario from the United Counties of York and Peel, directing defendant to appear in the United Counties of York, Ontario and Peel. It was not served until after the separation, and the venue in the declaration was laid in the three United Counties. The defendant thereupon demurred. *Held*, not a frivolous demurrer. (*Plaxton et al* v. *Smith*, 1 Prac. R. 228.)

(*d*) The provisions of this section are designed to prevent the necessity of special legislation. (See note *l* to sec. 8.) Special legislation in such matters, as herein provided for, has not hitherto been either successful or satisfactory. (See Stats. 19 Vic. cap. 19, and

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**35.** The member so appointed shall preside in the Council until a Provisional Warden has been elected by the Council from among the members thereof. (*e*) 29-30 V. c. 51, s. 40. Who to preside.

**36.** Every Provisional Council shall from time to time appoint a Provisional Warden, a Provisional Treasurer, and such other Provisional officers for the County as the Council deems necessary. (*f*) The Provisional Warden shall hold office for the municipal year for which he is elected, (*g*) and the Treasurer and other officers so appointed shall hold office until removed by the Council. (*h*) 29-30 V. c. 51, ss. 41, 42 & 43. Appointment of provisional warden and other officers. Term of office.

**37.** Every Provisional Council may acquire the necessary property at the County Town of the Junior County on which to erect a Court House and Gaol, and may erect a Court House and Gaol thereon, adapted to the wants of the County, and in conformity with any statutory or other rules and regulations respecting such buildings, and may pass By-laws for such purposes. (*i*) 29-30 V. c. 51, s. 44. Provisional councils may acquire lands for gaols and court houses.

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20 Vic. cap. 77, as to the separation of Huron and Bruce; and 19 Vic. cap. 66, and 23 Vic. cap. 95, as to the separation of York and Peel.) The Reeves and Deputy Reeves of the several Municipalities within the Junior County are *ex officio* members of the Provisional Council. (Sec. 70.)

*(e)* The new Council demands the appointment of a new presiding officer. The proper officer to preside over a County Council is the Warden of the County. But temporary provision is needed for the appointment of a presiding officer at the election of Warden. This section makes the provision temporarily needed in such a case. The next section provides for the election of Warden and other provisional officers.

*(f)* The mode of appointment is not here specified, but, strictly speaking, all such appointments ought to be by By-law. (See notes *h* and *i* to sec. 223.)

*(g)* The primary duty of the Warden is to preside at the meetings of the County Council. He needs no greater qualification than any other member of the Council. His selection is made from the Reeves and Deputy Reeves who compose the Council.

*(h)* Their holding is during pleasure. See sec. 220 and notes thereto.)

*(i)* Power is given to the Provisional Council—

1. To acquire the necessary property on which to erect a Court Court House and Gaol.
2. To erect a Court House and Gaol.

And these powers should be exercised by By-law.

The power conferred is in terms limited. It is not to acquire any property, or such property as the Council sees fit, but only such pro-

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Respective powers of provisional council and council of union.

**38.** The powers of a Provisional Council shall not interfere with the powers of the Council of the Union, and any money raised by the Provisional Council in the Junior County shall be independent of the money raised therein by the Council of the Union. (*j*) 20-30 V. c. 51. s. 45.

Agreement upon dissolution as to joint liabilities and joint assets.

Senior county assume debts of union. Junior county to be charged with just proportion.

**39.** After a Provisional Council has procured the necessary property, and erected thereon the proper buildings for a Court House and Gaol, such Council, and the Council of the Senior or remaining Counties, may enter into an agreement for the settlement of their joint liabilities and the disposition of their joint assets (other than real estate), and for determining the balance or amount that may be due by the one County to the other, and the time of payment thereof; and in determining such balance the Senior or remaining Counties shall assume the debts of the Union, and the Junior County be charged with such part thereof as may be just; and the value of the real estate, which, upon the separation, becomes the property of the Senior or Junior County respectively, shall also be taken into account, and any improvement effected by the Union which either County gets the exclusive benefit of. (*k*) 29-30 V. c. 51, s. 46.

When provisional councillors shall not vote.

**40.** No member of the Provisional Council shall vote or take any part in the Council of the Union on any question affecting such agreement, or the negotiation therefor. (*l*) 29-30 V. c. 51, s. 47.

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perty as may be *necessary* property for the purposes mentioned. (See *Bank of Michigan* v. *Niles*, 1 Doug. (Mich.) 401; *Davison College* v. *Executors of Chambers*, 3 Jones, Eq. (N. C.) 253; *State Bank* v. *Brackenridge*, 7 Blackf. (Ind.) 395.)

*(j)* Each Council is intended to govern a different body of ratepayers. It is only right, therefore, that the powers of either should not needlessly interfere with the powers of the other. But until the Provisional Council becomes a permanent Council, the ratepayers of the Provisional County must, for some purposes, remain subject to the powers of the Council of the Union. Money, however, raised by the Provisional Council is declared by this section to be independent of the money raised therein by the Council of the Union.

*(k)* It is necessary that the Gaol and Court House should be erected before an agreement respecting the debts of the Union is to be entered into, and then and not till then the County about to be separated is to arrange with the remaining County or Counties for a due proportion of the joint debts. (See sec. 25 and notes thereto.) In case the Councils do not agree as to the amount or periods of payment, they are to arbitrate. (See sec. 227 and following sections.)

*(l)* The reason is plain. Though the members of the Provisional Council are also members of the Council of the Union, yet in this

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**41.** In case the Councils, within one month after the period mentioned in section thirty-nine, are unable to determine by agreement the several matters hereinbefore mentioned with respect to their debts, assets and property, such matters shall be settled between them by arbitration under this Act, (*m*) and the County found liable shall pay to the other County the balance or amount agreed or settled to be due by such County, and such amount shall bear interest at six per centum per annum from the day on which the Union is dissolved, and shall be provided for, like other debts, by the Council of the County liable therefor after separation. (*n*) 29-30 V. c. 51, s. 48; 31 V. c. 30, s. 5; *vide* also 29-30 V. c. 52, s. 1.

In case of disagreement, disputes to be determined by arbitration.

Payment of amounts found due.

**42.** After the sum, if any, to be paid by the Junior County to the Senior or remaining County or Counties has been paid, or ascertained by agreement or arbitration, the Governor in Council shall require for the Junior County the appointment of a Judge, and shall appoint a Sheriff, one or more Coroners, a Clerk of the Peace, a Clerk of the County Court, a Registrar, and at least twelve Justices of the Peace; and shall provide, in the commission or commissions, that the appointments are to take effect on the day the Counties become disunited. (*o*) *Vide* 29-30 V. c. 51, s. 49.

Terms and time of separation.

Officials to be appointed.

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negotiation the matter lies between the Provisional Council on the one hand and the Council of the Union on the other. And the Provisional Council being for this purpose an independent and interested body, it follows that the interest of the Union, which is virtually the interest of the Senior or remaining County or Counties, should be protected by the Councillors of the Senior or remaining County or Counties.

(*m*) The matters for settlement are—

1. Joint liabilities.
2. Disposition of joint assets (other than real estate).
3. Determination of balance due by the one County to the other, and the times of payment thereof. (See sec. 39.)

These are to be settled, if possible, by agreement, as provided in the preceding section. Failing agreement, there must be a settlement by arbitration. After the settlement, in either of the modes provided, certain judicial and other officers are to be appointed (sec. 42), and then a proclamation may be issued for the separation.

(*n*) The rate of interest is here named, and not left to inference, as under sec. 25, in the case of the separation of United Townships.

(*o*) Judges are appointed under the B. N. A. Act by the Government of Canada. The language used in this section, therefore, is, "shall require for the Junior County the appointment of a Judge, &c." The remaining appointments may be made by the Provincial Government.

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Final separation of united counties by proclamation.

**43.** After such appointments are made, the Governor shall, by proclamation, (*oo*) separate the Junior County from the Senior or remaining County or Counties, and shall declare such separation to take effect on the first day of January next after the end of three months from the date of the proclamation; and on that day the Courts and officers of the Union (including Justices of the Peace) shall cease to have any jurisdiction in the Junior County; (*p*) and the real property of the Corporation of the Union situate in the Junior County shall become the property of the Corporation of the Junior County, and the real property situate in the remaining County or United Counties shall be the property of the Corporation of the remaining County or United Counties; (*q*) and the other assets belonging to the Corporation of the Union shall belong to and be the property of the Senior or Junior County or Union of Counties respectively, as agreed upon at the separation; (*r*) and if not otherwise disposed of by agreement or arbitration, they shall belong to and be the property of the Senior County or Union of Counties; (*s*) and in the case of choses in action, they

Property, how divided.

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(*oo*) See note *l* to sec. 8.

(*p*) A commission granted to a person to take recognizances of bail, &c., within the Gore District, was held not to empower him to take recognisances of bail in the County of Brant after its separation from the Gore District. (*Carter* v. *Sullivan*, 4 U. C. C. P. 298.) But where the commission was granted for the Midland District, which included the County of Prince Edward and the United Counties of Frontenac, Lennox and Addington, it was held that the commissioner resident in Frontenac, Lennox and Addington, after the separation of Prince Edward, had authority still to administer affidavits, as in the United Counties. (*McWhirter* v. *Corbett*, 4 U. C. C. P. 203; see also *Glick* v. *Davidson*, 15 U. C. Q. B. 591; and *Fleming* v. *McNaughten*, 16 U. C. Q. B. 194. It has been held that before the passing of Stat. Ont. 32 Vict. cap. 36, sec. 132, subsec. 2, that the Treasurer of the Senior County had no power to sell lands situate in the Junior County for arrears of taxes due to the Union before the separation. (*C. P. B. S.* v. *Agnew*, U. C. C. P., June 23, 1873.) By English Statute 2 & 3 Wm. IV. cap. 64, Sch. O. 30, Clifton was made a part of the Parliamentary Borough of Bristol, which is a County in itself. Except so far as that Act operated, Clifton was in the County of Gloucester. *Held*, that after the passing of the Municipal Corporations Act, 5 & 6 Wm. IV. cap. 76, ss. 7, 8, the Gloucester Justices had no longer the power to make an order diverting a footway in Clifton. *The King* v. *The Justices of Gloucestershire*, 4 A. & E. 689.)

(*q*) See note *l* to sec. 25.

(*r*) See note *m* to sec. 25.

(*s*) See note *p* to sec. 25.

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may be recovered in a suit, action, or other legal proceeding instituted or commenced in the name of the Senior County or Union of Counties. (*t*) 32 V. c. 43, s. 18.

Officers and property, &c. continued.

**44.** When a Junior County is separated from a Union of Counties, the head and members of the Provisional Council of the Junior County, and the officers, By-laws, contracts, property, assets and liabilities of the Provisional Corporation, shall be the head and members of the Council, and the officers, By-laws, contracts, property, assets and liabilities of the new Corporation. (*u*) 29-30 V. c. 51, s. 58.

Execution and service of process in hands of sheriff at time of separation.

**45.** The dissolution of a Union of Counties shall not prevent the Sheriff of any such Senior County from proceeding upon and completing the execution or service within the Junior County of any writ of mesne or final process in his hands at the time of such separation, or of any renewal thereof, or of any subsequent or supplementary writ in the same cause, or, in the case of executions against lands, from executing all necessary deeds and conveyances relating to the same; and the acts of all such sheriffs in that behalf shall be, and be held and construed to be, legal and valid, in the same manner and to the same extent as if no separation had taken place, but no further. (*v*) 32 V. c. 43, s. 18.

Change of venue in actions, &c., after separation.

**46.** If, upon the dissolution of a Union of Counties, there is pending an action, or other judicial civil proceeding in which the venue was laid in a County of the Union, the Court in which the action or proceeding is pending, or any Judge who has authority to make orders therein, may, by consent of parties, or on hearing the parties upon affidavit, order the venue to be changed to the new County, and all

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(*t*) This, after a transfer to the Junior County, is not in accordance with section 1 of Ont. Stat. 35 Vic. cap. 12, which provides that the assignee of a chose in action shall sue thereon in his own name.

(*u*) The Reeves and Deputy Reeves of a Junior County may, under sec. 34, and subject to the provisions of that section, be constituted a Provisional Council, with power, under sec. 36, to appoint Provisional officers, and, under and subject to the provisions of section 43, such junior County may, by proclamation, be separated from the Union. Hence it is enacted by the section here annotated, that the head and members of the Provisional Council of the Junior County, and the officers, &c., shall be the head, &c., and the officers, &c., of the new Corporation.

(*v*) This section is intended to prevent difficulties such as presented themselves for the decision of the Common Pleas in *Ross et al* v. *Farewell et al*, 5 U. C. C. P. 101.



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records and papers to be transmitted to the proper officers of such County. (*w*) 29-30 V. c. 51, s. 52; 32 V. c. 43, s. 18.

If no special order made, proceedings to be carried on in senior county.

**47.** In case no such change be directed, all such actions, and other judicial civil proceedings, shall be carried on and tried in the Senior County; (*x*) but nothing in this Act contained shall be construed to affect the provisions of sections fifty-two, fifty-three and fifty-five of the Act of the Parliament of the Province of Canada, passed in the session held in the twenty-ninth and thirtieth years of the reign of Her present Majesty, and chaptered fifty-one, so far as the same relate to criminal proceedings. (*y*) 29-30 V. c. 51, ss. 52, 53 & 55.

Proviso as to criminal proceedings.

Place for holding courts in junior county.

**48.** All Courts of the Junior County required to be held at a place certain, shall be held in the County Town of the Junior County. (*a*) 29-30 V. c. 51, s. 54.

Proceedings in civil cases under bailable process.

**49.** Any person arrested or held to bail under civil process, before the separation of a Junior from a Senior County, and liable to be imprisoned, shall be so imprisoned in the Gaol of the County in which he was arrested; and all proceedings in any suit or action in which any person was so arrested or held to bail, and all proceedings after judgment founded on the arrest or holding to bail, shall be carried on as if the arrest or holding to bail had taken place in such County as a separate County; and in case the proceedings are to be had in the Junior County, all the records and papers relative to the case shall be transmitted to the proper officer of the Junior County. (*b*) 29-30 V. c. 51, s. 56.

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(*w*) The dissolution should not affect pending proceedings. But where it is for the convenience of the parties that the venue should be changed to the new County, a discretionary power to order the change is here vested in the Court or a Judge. The change may be by consent or without consent, on a proper case shown by affidavit. (See Harrison's C. L. P. Act, sec. 85, and notes thereto.)

(*x*) The Senior County is that in which the Court House and Gaol, &c., are situate. (Sec. 32.) The object of this section is to fix the County in which pending proceedings are to be continued, when no order has been made under the preceding section for changing the venue to the Junior County after its separation.

(*y*) The old sections, so far as they relate to Criminal Procedure, are here preserved. The reason is that Criminal Procedure, under the B. N. A. Act, can only be repealed by the Dominion Legislature. (Sec. 91, subsec. 27; see further, note *v* to sec. 304.)

(*a*) Such as Assizes, Quarter Sessions, County Courts and Surrogate Courts, but not Division Courts, unless it be the Court for the Division in which the County Town is situate.

(*b*) See note *v* to sec. 45.

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**50.** In case a debtor or other person be (in manner prescribed by law) admitted to the Gaol limits of a Union of Counties, and the Union be afterwards dissolved, or one or more Counties be separated from the Union, such person or debtor may notwithstanding travel and reside in any portion of the said Counties, as if no dissolution or separation had taken place, without committing a breach of any bond or the condition thereof, or a forfeiture of any security given for the purpose of obtaining the benefit of such limits; (*c*) and in case any such person, after the dissolution of the Union, be surrendered or ordered to be committed to close custody, he shall be surrendered or committed to the Sheriff of the County in which he was arrested, and be imprisoned in the Gaol thereof. (*d*) 29-30 V. c. 51, s. 57.

Privileges of persons admitted to gaol limits saved on dissolution, &c.

DIVISION VI.—OF MATTERS CONSEQUENT UPON THE FORMATION OF NEW CORPORATIONS.

*By-laws, continuance of existing. Sec. 51, 52.*
*Debts and Liabilities not affected. Sec. 52–57.*
*Officials, how affected. Sec. 58–61.*

**51.** In case any Village is Incorporated, or Village or Town (with or without additional area) erected into a Town or City, or a Township or County becomes separated, the By-laws in force therein respectively shall continue in force until repealed or altered by the Council of the new Corporation; (*e*) but no such By-laws shall be repealed or altered

By-laws in force prior to formation of new corporations to continue in force until altered by council of such corporation.

(*c*) The design of this is to entitle a debtor on the Gaol limits of United Counties to have the benefit of such limits after as well as before the separation of one or more of the County or Counties from the remainder; but the necessity for such a provision, in the present altered state of the law, is not very apparent. Bonds to the limits are no longer conditioned to abide within the limits of any particular County or Counties, but "to observe and obey all notices, orders, or rules of Court, touching or concerning such debtor, or his answering interrogatories, or his appearing to be examined *viva voce*, or his returning and being remanded into close custody," &c. (Con. Stat. U. C. cap. 24, sec. 25.) So long as the debtor is in a position to return to the proper County, and observe and obey all notices, &c., he may reside where he pleases without a breach of the condition of the limit bond.

(*d*) While the debtor is on the limits, he may go where he pleases, so long as in a position to observe and obey all notices, &c.; but if committed to close custody, he is to be rendered to the Sheriff of the County, whether Junior or Senior, in which he was arrested.

(*e*) The effect of this section is to continue existing By-laws of the Union in both the Senior and Junior Counties and Townships respec-

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unless they could have been or can be legally repealed or altered by the Council which passed the same. (*f*) 29-30 V. c. 51, ss. 21 & 59.

What by-laws bind where limits of a municipality are extended.

**52.** In case an addition be made to the limits of any Municipality, the By-laws of such Municipality shall extend to the additional limits, and the By-laws of the Municipality, from which the same has been detached, shall cease to apply to the addition, except only By-laws relating to roads and streets, and these shall remain in force until repealed by By-laws of the Municipality, to which the same has been added. (*g*) 29-30 V. c. 51, s. 22.

Liability for debts at the time of dissolution.

**53.** In case of the erection of any locality into an Incorporated Village, or of a Village into a Town, or of a Town into a City, the Village, Town, or City shall remain subject to the debts and liabilities to which such locality was previously liable, in like manner as if the same had been contracted or incurred by the new Municipality; and, after the separation of a County or Township from a Union, each County or Township which formed the Union, shall remain subject to the debts and liabilities of the Union, as if the

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tively, after a separation, subject to the powers of each independent Council, to repeal or alter the same when the Council of the Union might have done so. The Council of a Municipality has in general power to repeal a By-law without reference to the people. (*The King* v. *Ashwell*, 12 East. 22; *The King* v. *Bird*, 13 East. 367; *Bloomer* v. *Stolley*, 5 McLean, 158; *Santo et al* v. *State of Iowa*, 2 Iowa, 165; *Bank of Chenango* v. *Brown*, 26 N. Y. 467; *Magee* v. *State*, 4 Ind. 362; *Rice* v. *Foster*, 4 Harrington, 479; *The People* v. *Collins*, 3 Mich. 347.)

(*f*) It was held that the Council of a Village incorporated and separated from a Township in which, before and at the time of the incorporation, a By-law existed prohibiting the sale of intoxicating liquors in shops and places other than houses of public entertainment within the Township, could not, by By-law not submitted for approval of the electors of the Village, repeal the prohibitory By-law so far as it affected the Village. (*In re Cunningham* v. *Almonte*, 21 U. C. C. P. 459.)

(*g*) The object of this section is to extend the existing By-laws of a Municipality to tracts of land added to the Municipality after the passing of the By-laws, and to indicate the exemption of such tracts of land from the operation of the By-laws of the Municipality to which they formerly belonged. Even the operation of the By-laws of the old Municipality creating debts, &c., are thus in effect got rid of; but By-laws relating to roads or streets, within the limits of such tracts, are, for obvious reasons, continued until repealed by the Council acquiring jurisdiction over the same. But see sec. 54.

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same had been contracted or incurred by the respective Counties or Townships of the Union after the dissolution thereof. (*h*) 29-30 V. c. 51, sub. 23, 61 & 64.

Debts in case of an extension of limits.

**54.** After an addition has been made to a Village, Town, or City, the Village, Town, or City shall pay to the Township or County, from which the additional tract has been taken, such part (if any) of the debts of the Township or County as may be just: and in case the Councils do not, within three months after the first meeting of the Council of the Municipality to which the addition has been made, agree as to the sum to be paid, or as to the time of payment thereof, the matter shall be settled by arbitration under this Act. (*i*) 29-30 V. c. 51, s. 24.

Debentures to issue for debts and to bind the old and new municipalities.

**55.** After the formation of a new Corporation by the dissolution of a Union of Counties or Townships, the Council of the senior or remaining County or Township shall issue its debentures or other obligations for any part of any debt contracted by the Union for which debentures or other obligation might have been, but had not been issued, before the dissolution; and such debentures or obligations shall recite or state the liability of the Junior County or Township therefor under this Act; and the Junior County or Township shall be liable therefor as if the same had been issued by the Union before the dissolution. (*j*) 29-30 V. c. 51, s. 62.

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(*h*) This strengthens the provisions contained in the previous section for the protection of creditors. At one time Junior Townships and Junior Counties only, after separation, were still made liable to existing debts. The present section extends the liability to a newly erected Incorporated Village, *i. e.*, renders it still liable for debts of the Township at the time of the incorporation of the Village. A Village made a Town, of course remains subject to its debts, being in effect the same Municipality advanced to a Town. So if a Town be erected into a City. The effect of this section is that a Village newly incorporated remains liable to pre-existing Township debts, and Towns and Cities respectively remain liable for the debts contracted by them while they were Incorporated Villages or Towns. The same principle is also, by this section, made applicable to Townships separating from a Union.

(*i*) The effect of sec. 52 is to exempt tracts of land annexed from the debts of the Municipality to which they formerly belonged. The effect of this section, read in connection with it, is to render the Municipality to which the annexation is made, liable to compensate the former Municipality a reasonable proportion of the pre-existing debts.

(*j*) In the reading of this section there are three points to be noted. *First*, that after the dissolution, the Council of the remain-

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Assessments for year preceding dissolution, who to belong to.

**56.** All assessments imposed by the Council of the then Corporation for the year next before the year in which the new Corporation is formed by separation therefrom, shall belong to the then Corporation, and shall be collected and paid over accordingly, and after the separation all special rates for the payment of debts theretofore imposed upon the locality by any By-law of the former Corporation shall continue to be levied by the new Corporation; and the Treasurer of the new Corporation shall pay over the amount as received to the Treasurer of the Senior or remaining Municipality, and the latter shall apply the money so received in the same manner as the money raised under the same By-law in the Senior or remaining Municipality. (*k*) *Vide* 29-30 V. c. 51, s. 63.

Special rates for debts continued, and to be paid over by treasurer of the junior county.

If the sum paid over exceeds the just amount, the excess may be recovered.

**57.** In case the amount so paid over as in the last preceding section provided, or to any creditor of the Senior or remaining Municipality, in respect of a liability of the former Corporation, exceeds the sum which, by the agreement or award between the Councils, the new Corporation ought to pay, the excess may be recovered against the Senior or remaining Municipality as for money paid or as for money had and received, as the case may be. (*l*) 29-30 V. c. 51, s. 64.

Form of action.

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ing County or Township shall issue its debentures or other obligations; but, to be effectual under this section, only "for any part of any debt contracted by the Union." *Second*, that such debentures, &c., shall recite or state the liability of the Junior County or Township therefor, under this Act: and *Third*, that the Junior County or Township shall be liable thereon as if the same had been issued by the Junior County or Township. Some doubt may arise on the third point, as to the nature of the liability, i. *e.*, whether it is to be a joint and several liability or joint only. The words used, "as if the same had been issued by the Union before the dissolution," would indicate the former. The object of the section is to provide for the completion of securities to creditors not perfect at the time of separation.

(*k*) The right to rates for the year next preceding the separation is here determined. The special rates mentioned are to be levied in each respective Municipality, after separation, and be collected by each respective collector, as if the By-law imposing the rates had been made after the separation by each County or Township separately. Such is the effect of the By-law of the Union having force in each Municipality severally after the dissolution of the Union. The duties of the Treasurers require careful attention.

(*l*) The liability of the Junior County or Township respectively notwithstanding separation, is explained in the note to sec. 55. The right of the Senior County or Township to rates imposed before the

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**58.** In case any Village is incorporated, or any Village or Town is erected into a Town or City, or any Township or County becomes separated, the Council and members thereof, having authority in the locality or Municipality immediately previous, shall, until the Council for the Corporation be organized, continue to have the same powers as before; and all other officers and servants of the locality or Municipality shall, until dismissed, or until successors be appointed, continue in their respective offices, with the same powers, duties, and liabilities as before. (*m*) 29-30 V. c. 51, s. 25.

Former council and officers to exercise jurisdiction over new municipalities, &c., until new councils are organized.

**59.** The separation of a Junior County or Township from a Union of Counties or Townships, shall not in any case or in any manner whatever affect the office, duty, power or responsibility of any public officer of the Union who continues a public officer of the Senior County or Township or remaining Counties or Townships after such separation, or the sureties of any such officer or their liability, further than by limiting such office, duty, power, responsibility, suretyship and liability to the Senior County or Township or remaining Counties or Townships. (*n*) 29-30 V. c. 51, s. 61, sub. 1.

Effect of separation upon public officers and their sureties.

**60.** All such public officers shall, after such separation, be the officers of the Senior County or Township or remaining Counties or Townships, as if they had originally been respectively appointed public officers for such Senior County or Township or for such remaining Counties or Townships only. (*o*) 29-30 V. c. 51, s. 61, sub. 2.

Further as to officers, and

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separation, is also explained in the note to sec. 56. The section under consideration provides for the reimbursement to the Junior Municipality of any sum which the Junior may have paid, exceeding the proportion which it, according to the adjustment with the Senior, was bound to contribute.

(*m*) It is necessary that there should not be any period of time without a proper governing body. When the new Council is organized, it supersedes the previous Council; but until such organization, the Council and the members thereof having authority immediately previous to the change, shall have continued authority. For similar reasons officers and servants of the Municipality continue until dismissed. (See sec. 220 and notes thereto.)

(*n*) The necessity for such a provision as this will be manifest upon reading *Thompson et al* v. *McLean et al*, 17 U. C. Q. B. 495. In that case it was held (Burns, J., *dissentiente*), that without such a provision the sureties of a Sheriff were relieved from liability by reason of the change in the office.

(*o*) This is a consequence of the preceding section. The declaration is not only that the public officers of the Union shall, after the

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their sureties.

**61.** All sureties for such public officers shall be and remain liable, as if they had become the sureties for such public officers in respect only of such Senior County or Township or of such remaining Counties or Townships; and all securities which have been given shall, after such separation, be read and construed as if they had been given only for such Senior or remaining County or Counties or Township or Townships. Nothing herein contained shall affect the right of new sureties being required to be given by any Sheriff or by any Clerk or Bailiff, or other public officer, under any statute, or otherwise howsoever. (*p*) 29-30 V. c. 51, s. 61, sub. 3 & 4.

Right to new sureties not affected.

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## PART II.

### OF MUNICIPAL COUNCILS, HOW COMPOSED.

TITLE I.—THE MEMBERS.
TITLE II.—QUALIFICATION, DISQUALIFICATION, AND EXEMPTIONS.

### TITLE I.—THE MEMBERS.

DIVISION I.—IN COUNTIES.
DIVISION II.—IN CITIES.
DIVISION III.—IN TOWNS.
DIVISION IV.—IN VILLAGES.
DIVISION V.—IN TOWNSHIPS.
DIVISION VI.—IN PROVISIONAL CORPORATIONS.

#### DIVISION I.—IN COUNTIES.

*Councils.—Sec. 62-65.*

Counties.

**62.** The Council of every County (*a*) shall consist of the Reeves and Deputy Reeves of the Townships and Villages within the County, and of any Towns within the County which have not withdrawn from the jurisdiction of the

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separation, be the officers of the Senior County or Township or remaining Counties or Townships, but be so "as if they had originally been respectively appointed public officers for such Senior County or Township or for such remaining Counties or Townships only."

(*p*) This section only relates to existing securities, and so is not to be read as affecting the right to require new sureties when new sureties may in any case be properly demanded. (See note *n* to sec. 59.)

(*a*) The Council is not the Corporation, but only the governing body, and in some cases the legislative body of the Corporation. (See note *k* to sec. 7, note *l* to sec. 8, and note *g* to sub. 27 to sec. 384.)

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Council of the County, and one of the Reeves or Deputy Reeves shall be the Warden. (*aa*) 29-30 V. c. 51, s. 66, sub. 1.

County Councils.

**63.** No Reeve or Deputy Reeve shall take his seat in the County Council, until he has filed with the Clerk of the County Council a certificate of the Township, Village or Town Clerk, under his hand, and the seal of the Municipal Corporation, that such Reeve or Deputy Reeve was duly elected, and has made and subscribed the declarations of office and qualification as such Reeve or Deputy Reeve; nor in case of a Deputy Reeve, until he has also filed with the Clerk of the County an affirmation or declaration of the Clerk or other person having the legal custody of the last revised Assessment Rolls for the Municipality which he represents, that there appear upon such Rolls the names of at least five hundred freeholders and householders in the Municipality possessing the same property qualification as voters, for the first Deputy Reeve elected for such Municipality, and that no alteration reducing the limits of the Municipality, and the number of persons possessing the same property qualification as voters, below five hundred for each additional Deputy Reeve, since the said Rolls were last revised, has taken place. (*b*) 29-30 V. c. 52, s. 67.

Certificates as to election and number of freeholders and householders to be filed by reeves and deputy reeves.

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(*aa*) Townships are entitled to a certain number of Reeves and Deputy Reeves, in proportion to their population. (See secs. 67, 68, 69.) The Reeves and Deputy Reeves are the representatives of the local Municipalities in the County Council. The Council of the County is composed of them. They are authorized and required to elect one of their number to be the Warden or head of the County Council.

(*b*) The Clerk may reject the certificate if not in the form required. The section is positive that no Reeve, &c., shall take his seat, &c., *until* he has filed, &c. The certificate made necessary is the evidence of the right of the person presenting it to a seat in the County Council. The County Clerk is in the first instance made the judge of its legal sufficiency. But no Clerk should, according to his own caprice or preference of any kind, decide in favour of and allow certain persons with defective certificates to take their seats, and disallow other certificates quite as good. In such a case the Clerk, if made a party to a contested election proceedings, would be in all probability made to pay costs. But it does not follow that a Reeve or Deputy Reeve, whose certificate is defective, if once admitted by the Clerk to sit and vote, has not the right to do so when in truth qualified. Nor does it follow that a certificate in all respects regular entitles the Reeve or Deputy Reeve to sit and vote in the Council if not really qualified. The certificate is only evidence that what is contained in it was done. If it has not been done, or the Reeve or Deputy Reeve had not been duly elected, the mere certificate would

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Form of certificate as to election, &c.

**64.** The certificate firstly mentioned may be in the following form: (*c*)

I, *A. B.*, of , Gentleman, Clerk of the Corporation of the Township (Town *or* Village, *as the case may be*) of , in the County of , do hereby, under my hand and the Seal of the said Corporation, certify that *C. D.*, of , Esquire, was duly elected Reeve (*or* Deputy Reeve, *as the case may be*) of the said Township (Town *or* Village, *as the case may be*), and has made and subscribed the declarations of office and qualification as such Reeve (*or* Deputy Reeve, *as the case may be*).

Given under my hand and the Seal of the said Corporation of , at , in the said Township (Town *or* Village, *as the case may be*), this day of A.D. 18 .

{ Seal of the Municipal Corporation. }

*A. B.*,
*Township (Town or Village) Clerk.*

Form of certificate as to number of freeholders and householders.

**65.** The certificate secondly mentioned may be in the following form: (*cc*)

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not give the party holding it the right to sit and vote in the Council. That right comes from his being the Reeve or Deputy Reeve, and having made the required declarations. If the certificate were the essence of his qualification, and not merely the evidence of it, then it might be held that the acts done by the Reeve or Deputy Reeve who did not possess it, or only possessed a defective one, were void. But the certificate merely being evidence of his qualification, if it turn out that he is really qualified, it cannot be held that his acts as a member of the County Council are void. Nor can they be in any way impugned on account of the imperfect certificate. The statute does not declare that the votes of any Reeve or Deputy Reeve taking his seat without the certificate shall be void, nor say that the proceedings supported and carried by such votes shall not be binding. The section in this respect may be properly considered directory and so construed. (See *The Queen ex rel. McManus* v. *Ferguson*, 2 U. C. L. J. N. S. 19.)

(*c*) It is to be hoped that as the Legislature has at length seen fit to give a form of certificate, that the form will be closely followed. In previous Acts no form was given. The consequence was a variety of forms in use, that were often incorrect. (See the forms held bad in *The Queen ex rel. McManus* v. *Ferguson*, 2 U. C. L. J. N. S. 19.) The Editor, in the notes to the second edition of this work, prepared and published a form. The Legislature, in this Act, has adopted the Editor's form.

(*cc*) See note *c* to sec. 64.

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I, *A. B.*, of , Gentleman, Clerk of the Township (Town *or* Village, *as the case may be*) of , in the County of , do hereby declare and affirm as follows:

(1.) That I am the person having the legal custody of the last revised Assessment Roll for the said Township (Town *or* Village, *as the case may be.*)

(2.) That there appear upon the said roll the names of at least hundred (*five hundred for each Deputy Reeve,*) freeholders and householders in the said Township (Town *or* Village, *as the case may be*), possessing the same property qualifications as voters.

(3.) That no alteration reducing the limits of the said Municipality, and the number of persons possessing the same property qualifications as voters below hundred (*five hundred for each Deputy Reeve,*) since the said roll was last revised, has taken place.

*New* A. B.

### Division II.—In Cities.

*Councils.—Sec. 66.*

**66.** The Council of every City (*d*) shall consist of the Mayor, who shall be the head thereof, and three Aldermen for every Ward, to be elected in accordance with the provisions of this Act. (*dd*) 29-30 V. c. 51, s. 66, sub. 2. Cities.

### Division III.—In Towns.

*Councils.—Sec. 67.*

**67.** The Council of every Town (*e*) shall consist of the Mayor, who shall be the head thereof, and of three Councillors for every Ward when there are less than five Wards, Towns.

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(*d*) The Council is not the Corporation, but simply the governing body, and in some cases the legislative body of the Corporation. (See note *k* to sec. 7, note *l* to sec. 8, and note *g* to sub. 27 to sec. 384.)

(*dd*) At one time the Council of a City was composed of two Aldermen and two Councilmen; the latter needing less property qualification than the former, but having equal power of voting from each Ward. The office of Councilman in Cities no longer exists. Its existence was unnecessary, and its abolition, under the circumstances, proper and right. But while the office of Councilman is abolished, an additional Alderman is given to each Ward.

(*e*) See preceding note.

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and of two Councillors for each Ward where there are five or more Wards, and if the Town has not withdrawn from the jurisdiction of the Council of the County in which it lies, then a Reeve shall be added, and if the Town had the names of five hundred freeholders and householders on the last revised Assessment Roll, possessing the same property qualification as voters, then a Deputy Reeve shall be added, and for every additional five hundred names of persons possessing the same property qualification as voters on such roll, there shall be elected an additional Deputy Reeve. (*ee*) 31 V. c. 30, s. 6; 33 V. c. 26, ss. 1 & 2; 34 V. c. 30, s. 1.

### Division IV.—In Incorporated Villages.

*Councils.—Sec. 68.*

Incorporated villages.

**68.** The Council (*f*) of every Incorporated Village shall consist of one Reeve, who shall be the head thereof, and four Councillors; and if the Village had the names of five hundred freeholders and householders on the last revised Assessment Roll, possessing the same property qualification as voters, then of a Reeve, Deputy Reeve, and three Councillors; and for every additional five hundred names of persons possessing the same property qualification as voters on such Roll, there shall be elected an additional Deputy Reeve instead of a Councillor. (*ff*) 29-30 V. c. 52, s. 66, sub. 4.

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(*ee*) This section is very confusedly worded. Apparently all that is required to give a Deputy Reeve is "the names of five hundred freeholders and householders *on the last revised Assessment Roll.*" But it is apprehended that if the names were fraudulently inserted on the Roll, for the purpose of enabling the particular Municipality to obtain a Deputy Reeve, the Roll would not be conclusive. (See *The Queen ex rel. Hart* v. *Lindsay*, 18 U.C. Q. B. 51.) Then as to additional Deputy Reeves, the provision is not that "for each additional five hundred *freeholders* and *householders*" there shall be a Deputy Reeve, but that for "every additional five hundred *names* of persons possessing the same property qualification as voters on such Roll," there shall be an additional Deputy Reeve. Now there may be women who, though not voters, have the same *property* qualification as voters. Whether women, whose names appear on the Roll, should be added for the purpose of ascertaining the right to a Deputy Reeve, is one of the questions which directly arise under this section. Females are not entitled, in this country, to vote at Municipal Elections. See note *b* to sec. 77.

(*f*) See note *d* to sec. 66.

(*ff*) See note *ee* to sec. 67.

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DIVISION V.—IN TOWNSHIPS.

*Councils.—Sec. 69.*

Townships.

**69.** The Council (*g*) of every Township shall consist of a Reeve, who shall be the head thereof, and four Councillors, one Councillor being elected for each Ward where the Township is divided into Wards, and the Reeve to be elected by a general vote; but if the Township had the names of five hundred freeholders and householders on the last revised Assessment Roll, possessing the same property qualification as voters, then the Council shall consist of a Reeve, Deputy Reeve, and three Councillors; and for every additional five hundred names of persons possessing the same property qualification as voters on such Roll, there shall be elected an additional Deputy Reeve instead of a Councillor. (*gg*) 29-30 V. c. 52, s. 66, sub. 5.

DIVISION VI.—IN PROVISIONAL CORPORATIONS.

*Councils.—Sec. 70.*

What reeves and deputy reeves to be provisional council.

**70.** The Reeves and Deputy Reeves of the Municipalities within a Junior County, for which a Provisional Council is established, shall, *ex officio*, be the members of the Provisional Council. (*h*) 29-30 V. c. 51, s. 69.

## TITLE II.—QUALIFICATION, DISQUALIFICATION, AND EXEMPTIONS.

DIVISION I.—OF QUALIFICATION.
DIVISION II.—OF DISQUALIFICATION.
DIVISION III.—OF EXEMPTIONS.

DIVISION I.—OF QUALIFICATION.

*In each Municipality. Sec. 71.*
*Nature of Estate to be possessed. Sec. 72.*
*Where no Assessment Roll provided for. Sec. 73.*
*Where only one qualified person. Sec. 74.*

Qualification of councillors, &c.

**71.** The persons qualified to be elected Mayors, Aldermen, Reeves, Deputy Reeves, and Councillors of any

(*g*) See note *d* to sec. 66.

(*gg*) See note *ee* to sec. 67.

(*h*) See sec. 34 and following sections, as to Provisional Councils. See note *k* to sec. 7, note *l* to sec. 8, and note *g* to subsec. 27 of sec. 384, as to the executive and legislative powers of an ordinary Municipal Council.

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Municipality, (*i*) are such persons as reside within such Municipality, or within two miles thereof, (*i*) and are natural-born or naturalized subjects of Her Majesty, (*ii*) and males of the full age of twenty-one years, (*j*) and who are not disqualified under this Act, (*k*) and have, at the time of the election, (*l*) in their own right, or in the right of their wives, (*k*) as proprietors or tenants, (*m*) a legal or equitable freehold or leasehold, or partly legal and partly

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(*i*) Before this enactment it was held that a person rated on the Assessment Roll of a City, but at the time of the election resident in an adjoining Township of the County in which the City was territorially situate, though almost in the boundary between the two Municipalities, was not qualified to be elected a member of the Council of the City. (*The Queen ex rel. Blasdell* v. *Rochester*, 7 U. C. L. J. 101; *The Queen ex rel. Fleming* v. *Smith*, *Ib.* 66.) But this section extends the privileges beyond residents of the particular Municipality to residents within two miles of which the Municipality is situate.

(*ii*) Indians, being British subjects, are persons within the meaning of this section. (*The Queen ex rel. Gibb* v. *White*, 5 Prac. R. 315; see further, note *f* to sec. 77.)

(*j*) See note *g* to sec. 77.

(*k*) See sec. 75.

(*l*) B. and A. were partners, occupying premises as co-tenants under a yearly tenancy on the terms of an expired lease. Before the nomination day they dissolved partnership, B. leaving the business and premises and leaving A. in possession. A. shortly afterwards went into partnership with S. The new firm then took a fresh lease of the premises from the landlord. *Held*, that B. was not at the time of the election the co-tenant of A., so as to entitle him to become a candidate for alderman. (*The Queen ex rel. Adamson* v. *Boyd*, 4 Prac. R. 204.)

(*k*) It is now declared that the real estate of any married woman, owned by her at the time of her marriage, or acquired in any manner during coverture, and the rents, issues and profits thereof respectively, shall, without prejudice and subject to the trusts of any settlement affecting the same, be held and enjoyed by her for her separate use, *free from any estate or claim of her husband during her lifetime, or as tenant by the curtesy*, &c. (Stat. Ont. 35 Vic. cap. 16, sec. 1.) It may be that the effect of this Act, in cases where it applies, is to abolish the estate of the husband in his wife's land, and so disentitle him to qualify under this section in respect of his wife's property. The point has not as yet been judicially determined.

(*m*) A person having the mere possession of a parcel of land vested in the Crown, determinable by the Crown at any moment, was held not to have such an interest in the land, either as proprietor or tenant, as to enable him to qualify under this section. (*The Queen ex rel. Lochford* v. *Frizell*, 9 U. C. L. J. N. S. 27.) There can be no qualification on personal property. (*The Queen ex rel. Fluett* v. *Semandie*, 5 Prac. R.

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equitable, (*n*) rated in their own names on the last revised Assessment Roll of such Municipality, (*o*) to at least the value following:

In incorporated villages.

(1.) In Incorporated Villages—Freehold to six hundred dollars, or leasehold to twelve hundred dollars;

In towns.

(2.) In Towns—Freehold to eight hundred dollars, or leasehold to sixteen hundred dollars;

In cities.

(3.) In Cities—Freehold to one thousand five hundred dollars, or leasehold to three thousand dollars;

In townships.

(4.) In Townships—Freehold to four hundred dollars, or leasehold to eight hundred dollars.

Property of different kinds.

And so in the same proportions in all Municipalities, in case the property is partly freehold and partly leasehold. 29-30 V. c. 51, ss. 70 & 106; 31 V. c. 30, s. 7.

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19.) Nor can the assessment on realty be supplemented by the assessment on personalty. (*Ib.*) A landlord is sufficiently possessed where his tenant is assessed. *The Queen ex rel. Shaw* v. *Mackenzie*, 2 Cham. R. 36.) So a landlord may put together properties, some occupied by his tenant and some by himself, to make up the assessed value required by the statute. (*The Queen ex rel. Dexter* v. *Gowan*, 1 Prac. R. 104; see further, note *c* to sec. 77.) As to the necessary declaration of property, see sec. 211.

(*n*) The qualification may be of an estate legal or equitable. The estate, whether legal or equitable, need not be free from all encumbrances. If encumbered, and after deducting the gross amount of the encumbrances from the assessed value of the premises, there be still left a sufficient value in respect of which to qualify, the qualification, notwithstanding the encumbrances, is sufficient. (*The Queen ex rel. Blakeley* v. *Canavan*, 1 U.C. L.J. N.S. 188.) Where defendant, in November, 1858, conveyed the real estate, which formed the subject matter of his qualification, to his father for a consideration of £300, for which he took his father's notes payable at distant dates, and in February, 1860, purchased the property back, returning to his father all the notes, though the father did not reconvey the property to the son till the 3rd October, 1860; yet the son was held to have had at the time of the assessment an equitable estate within the meaning of the Act. (*The Queen ex rel. Tilt* v. *Cheyne*, 7 U. C. L. J. 99; see further, *Rolleston* v. *Cope*, L. R. 6 C. P. 292; *Simey* v. *Marshall*, L. R. 8 C. P. 269; *Heelis* v. *Blain*, 18 C. B. N. S. 90; *Webster* v. *Overseers of Ashton-under-Lyne*, *Orme's Case*, L. R. 8 C. P. 281; *Hadfield's Case*, *Ib.* 306.

(*o*) Both the property qualification and the rating are necessary to give a qualification for office under the section. (*The Queen ex rel. Metcalfe* v. *Smart*, 10 U. C. Q. B. 89.) When land is rated against both the owner and occupant, or owner and tenant, the assessor must place both names within brackets on the Roll, and should write opposite the name of the owner the letter "F.," and opposite the name of the occupant or tenant the letter "H." or "F." Both names should be numbered on the Roll. (32 Vic. cap. 36, s. 26.) The omis-

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"Leasehold" defined.

Nature of estate.

**72.** The term "leasehold," in the foregoing section, shall not include a term less than a tenancy for a year, or from year to year; (*oo*) and the qualification of all persons, where a qualification is required under this Act, may be of an estate either legal or equitable, or may be composed partly of each. (*p*) 29-30 V. c. 51, s. 70.

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sion to number them, however, does not invalidate the assessment. (See *The Queen ex rel. Lachford* v. *Frizell*, 9 U. C. L. J. N. S. 27.) The rating should be by name on the Roll. (*The Queen ex rel. Metcalfe* v. *Smart*, 2 Cham. R. 114; but see *The Queen ex rel. Laughton* v. *Baby*, *Ib.* 130.) Where on the Assessment Roll, under the general heading, "Names of taxable parties," were entered the names of "Ker, William and Henry," for two separate parcels of land, and in the proper columns were the letters "F." and "H.," and in the column headed "Owners and address" was entered opposite to the parcels of land, "Wm. Ker & Bros.;" *held*, that "William Ker & Henry Ker," and not "William Ker & Brothers," were the persons in whose names the properties were rated, and that they were sufficiently rated. (*The Queen ex rel. McGregor* v. *Ker*, 7 U. C. L. J. 67; see, however, *Applegarth et al* v. *Graham*, 7 U. C. C. P. 171, and *Little* v. *Overseers of Penrith*, L. R. 8 C. P. 259.) Judges are in general disposed to go as far as the facts will allow for the purpose of reconciling the mode of rating with the facts, if the person elected has really a legal qualification. (*The Queen ex rel. Northwood* v. *Askin*, 7 U. C. L. J. 130; *The Queen ex rel. Ford* v. *Cottingham*, 1 U. C. L. J. N. S. 214; *The Queen ex rel. Chambers* v. *Allison*, *Ib.* 244; *The Oldham Case*, 1 O'M. & H. 153; see further, note *m* to sec. 77.) Where a person elected as alderman of a city made a declaration of office, inadvertently qualifying upon property in respect of which he was not entitled to qualify, but was qualified in respect of other property, his election was sustained. (*The Queen ex rel. Hartrey* v. *Dickey*, 1 U. C. L. J. N. S. 190.) Property owned by a candidate, but not mentioned on the Assessment Roll, cannot be made available. (*The Queen ex rel. Carroll* v. *Beckwith et al*, 1 Prac. R. 278.) An administrator, though rated in his own name for real estate belonging to the deceased, is not entitled to qualify upon such real estate. (*The Queen ex rel. Stock* v. *Davis*, 3 U. C. L. J. 128.) But the Roll, as to property qualification, is in general binding and conclusive. (*The Queen ex rel. Fluett* v. *Semandie*, 5 Prac. R. 19.) In the case of electors there is an express declaration to that effect. (See note *n* to sec. 74.) The amount of property rated on the Roll is at all events so far conclusive, that encumbrances cannot be taken into consideration to reduce it. (*The Queen ex rel. Flater* v. *Van Velsor*, 5 Prac. R. 319; *The Queen ex rel. Philbrick* v. *Smart*, *Ib.* 323.)

(*oo*) A person having the mere possession of a Crown lot, determinable at any moment, though rightly assessed under the Assessment Act, has no such estate in the land as will qualify him for office. (*The Queen ex rel. Lachford* v. *Frizell*, 9 C. L. J. N. S. 27; see further, *Mayhew* v. *Suttle et al*, 4 E. & B. 347, 357; *White* v. *Bayley et al*, 10 C. B. N. S. 227.)

(*p*) The latter part of this section is a repetition of a portion of section 71. (See note *n* to that section.)

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**73.** In case of a new Township erected by proclamation, for which there has been no Assessment Roll, every person who, at the time of the first election, has such an interest in real property, and to such an amount as hereinbefore mentioned, shall be deemed to be possessed of a sufficient property qualification. (*q*) 29-30 V. c. 51, s. 71. In new township not having assessment roll.

**74.** In case in a Municipality there are not at least two persons qualified to be elected for each seat in the Council, no qualification beyond the qualification of an elector shall be necessary in the persons to be elected. (*r*) 29-30 V. c. 51, s. 72. If only one person be qualified.

### Division II.—Of Disqualification.

*Persons disqualified.—Sec. 75.*

**75.** No Judge of any Court of civil jurisdiction, no Gaoler or Keeper of a House of Correction, no Sheriff, Deputy Sheriff, Sheriff's Bailiff, High Bailiff or Chief Constable of any City or Town, Assessor, Collector, Treasurer or Clerk of any Municipality, no Bailiff of any Division Court, no County Attorney, no Registrar, no Deputy Clerk of the Crown, no Clerk of the County Court, no Clerk of the Peace, (*s*) no inn-keeper or saloon-keeper, or shop-keeper Persons disqualified from being councillors, &c.

(*q*) Both the possession of property and the rating of it are in general necessary to give a qualification for office under this Act. (See note *o* to sec. 71.) But in the case of the first election in a new Township, there can be no rating of property, as there is no Assessment Roll for such new Township. In such case the property qualification, without the rating, is all that is made necessary. If more were necessary, there could be no qualification at all. As to the property qualification, see sec. 71 and notes thereto.

(*r*) In what manner is this section to be construed? Is it only to come into operation when the number is below two persons qualified to be elected for each seat as applied simply to qualification in respect to property, or after deducting all those who are disqualified to be elected from other causes? It is apprehended the expression, "qualified to be elected," must be construed in the larger sense, that is, for the benefit and advantage of the whole body of electors; for if it should happen, from some cause or other, that all those who might be elected as respects property yet were disqualified as respects interest or otherwise, the Municipality could have no Council if the inhabitants could not resort to the general body of electors for Councillors. (*Per* Burns, J., in *The Queen ex rel. Bender* v. *Preston*, 7 U. C. L. J. 100.) It has been held, for the purposes of this section, that the Roll is not conclusive as to the "persons qualified to be elected." (*The Queen ex rel. Telfer* v. *Allan*, 1 Prac. R. 214.)

(*s*) Officers not named would, it is presumed, be qualified. All persons having the necessary qualification are made eligible under



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Proviso: as to shareholders in companies having dealings with corporations and lessees for 21 years from corporations.

licensed to sell spirituous liquors by retail, (*t*) and no person having by himself or his partner an interest in any contract with or on behalf of the Corporation, shall hereafter be qualified to be a member of the Council of any Municipal Corporation: (*u*) Provided always, that no person shall be

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section 71. The exceptions are persons by this section expressly declared to be disqualified. A local superintendent of schools was held not to be disqualified under the old law. (*The Queen ex rel. Arnott et al* v. *Marchant*, 2 Cham. R. 189.) But an overseer of highways was held disqualified under the general words, "any officer of the Municipality." (*The Queen ex rel. Richmond* v. *Tegart*, 7 U. C. L. J. 128.) So the Clerk of a County Council. (*The Queen ex rel. Boyes* v. *Detlor*, 4 Prac. R. 197.) As to the Corporation Solicitor, see *Peterborough* v. *Burnham*, 12 U. C. C. P. 103; see further, *The Queen ex rel. Sawers* v. *Stevenson*, 5 U. C. L. J. 42. It is not in express terms declared that an insolvent shall be disqualified. (See *The King* v. *Chitty*, 5 A. & E. 609; see also sec. 123 of this Act; see further, secs. 153, 154, 159 & 160 of this Act as to other disqualifications.) By the English Act 5 & 6 Wm. IV. cap. 76, s. 28, no person being in holy orders, or being the regular minister of a dissenting congregation, is qualified to be a Councillor of a Borough. But it was held that a minister appointed to officiate occasionally or temporarily to a dissenting congregation was not disqualified. (*The Queen* v. *Oldham*, 10 B. & S. 193.)

(*t*) An "innkeeper" is the owner of a house who holds out that he will receive all travellers and sojourners who are willing to pay a price adequate to the accommodation required. (See *Thompson* v. *Lacy*, 3 B. & A. 283; *Dansey* v. *Richardson*, 3 E. & B. 144; *Holder* v. *Soulby*, 8 C. B. N. S. 254; *Allen* v. *Smith*, 12 C. B. N. S. 638: *Threfall* v. *Borwick*, L. R. 7 Q. B. 711.) The disqualification under this section is not, however, restricted to innkeepers. It extends to all saloon-keepers and shop-keepers who are licensed to sell spirituous liquors by retail. A man may be an innkeeper under this section, though without a license (*The Queen ex rel. Flanagan* v. *McMahon*, 7 U. C. L. J. 155), and though he take out the license in the name of another (*McKay* v. *Brown*, 5 U. C. L. J. 91); but if a man, being an innkeeper, in good faith transfers his license, he ceases to be disqualified under the Act. (*The Queen ex rel. Crozier* v. *Taylor*, 6 U. C. L. J. 60; see further, *Dixon* v. *Birch*, L. R. 8 Ex. 135.)

(*u*) The object of this part of the section, like that of section 28 of the English Municipal Corporation Act of 5 & 6 Wm. IV. cap. 76, is clearly to prevent all dealings on the part of the Council with any of its members in their private capacity, or, in other words, to prevent a member of the Council, who stands in the situation of a trustee for the public, from taking any share or benefit out of the trust fund, or in any contract in the making of which he, as one of the Council, ought to exercise a superintendence. (*The Queen* v. *Francis*, 21 L. J. Q. B. 304.) The evil contemplated being evident, and the words used general, they will be construed to extend to all cases which come within the mischief intended to be guarded against, and which can fairly be brought within the words. (*Ib.*) The words of our enactment are that "no person having by himself or his partner an interest

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held to be disqualified from being elected a member of the Council of any Corporation by reason of his being a share-

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in any contract with or on behalf of the Corporation shall be qualified," &c.; and the words of the English Act are that "no person shall be qualified, &c., who shall have, directly or indirectly, by himself or his partner, any share or interest in any contract *or employment* with, by, or on behalf of such Council," &c. The difference deserves to be noticed. Under an old Act, of which the section here annotated is a re-enactment, it was held that a person who had executed a mortgage to the Corporation, containing covenants for payment of money, was disqualified. (*The Queen ex rel. Lutz* v. *Williamson*, 1 Prac. R. 94.) It is not necessary that the contract should be a contract binding on the Corporation. (*The Queen* v. *Francis*, 21 L. J. Q. B. 304.) Where defendant, before the election, had tendered for some painting and glazing required for the city hospital, and, his tender having been accepted, he had done a portion of the work, for which he had not been paid, but afterwards refused to execute a written contract prepared by the City Solicitor, and informed the Mayor of the city that he did not intend to go on with the work, he was notwithstanding held to be disqualified. (*The Queen ex rel. Moore* v. *Miller*, 11 U. C. Q. B. 465.) So where the person elected had tendered for the supply of wood and coal to the Corporation. (*The Queen ex rel. Rollo* v. *Beard*, 1 U. C. L, J. N. S. 126.) The trustees of a common school in the town of Sandwich being about to erect a school-house, one Gauthier offered to supply a certain quantity of brick to them for the purpose. They told him that if the Town Council would agree to pay him for the bricks, they would take them. He then said he would take payment for them by letting the amount go against his taxes in each year, with interest at eight per cent. on the whole amount unpaid. This proposition was accepted, and the bricks were furnished. Gauthier was held disqualified to be a member of the Council. (*The Queen ex rel. Fluett* v. *Gauthier*, 5 Prac. R. 24.) So where a member of the Council, being a baker, supplied bread to fulfil a gaol contract held by another person in his own name, but which was looked upon as really the contract of the former, he was held to be disqualified. (*The Queen ex rel. Piddington* v. *Riddell*, 4 Prac. R. 80.) Whether the contract is in the name of the party himself or another, is immaterial. (See *Collins* v. *Swindle*, 6 Grant, 282; *City of Toronto* v. *Bowes*, 4 Grant, 489; s. c. 6 Grant, 1.) A person who had entered into a contract with the Corporation of the City of Dublin, was held disqualified, even though he had, before the election (but without the privity of the Corporation), assigned his contract to a third person. (*The Queen* v. *Franklin*, Ir. R. 6 C. L. 239.) Where a Municipal Council by by-law granted to defendant, upon certain conditions, a right to build a dam and bridge across a river, in consideration of which he promised to keep it in repair at his own expense for forty years, he was held to be disqualified. (*The Queen ex rel. Patterson* v. *Clarke*, 5 Prac. R. 337.) So where it was shown that the candidate elected was a surety for the treasurer of the town, and acting as solicitor for the town. (*The Queen ex rel. Coleman* v. *O'Hare*, 2 Prac. R. 18.) So a surety in any sense to the Corporation. (*The Queen ex rel. McLean* v. *Watson*, 1 U. C. L. J. N. S. 71.) But a surety was held not disqualified under the following facts: The treasurer of a township

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holder in any incorporated company having dealings or contracts with the Council of such Municipal Corporation, or

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was appointed by annual by-laws, which were silent as to time in 1859, 1860 and 1861. In 1861 the defendant became his surety, by bond, which bond did not state the duration of liability. In 1863 the same treasurer was also appointed by a similar by-law. In 1864 the by-law limited his liability to the year 1864. From that year to 1869, no time was specified. In 1869 he was appointed for one year. His accounts were audited, and found correct. *Held*, that defendant, his surety, was not disqualified. (*The Queen ex rel. Ford* v. *McRae*, 5 Prac. R. 309.) At one time it was held that where work was done under a contract, and nothing remained but payment, that the contractor was disqualified. (*The Queen ex rel. Davis* v. *Carruthers*, 1 Prac. R. 114; *The Queen ex rel. Rollo* v. *Beard*, 1 U. C. L. J. N. S. 126.) But recent English authority is against that position. (See *Royse* v. *Birley*, L. R. 4 C. P. 296.) If, however, at the time of the election, there be a dispute in good faith between the candidate and the Municipality, arising out of a matter of contract, the candidate is disqualified. (*The Queen ex rel. Bland* v. *Figg*, 6 U. C. L. J. 44; *The Queen ex rel. McMullen* v. *De Lisle*, 8 U. C. L. J. 291.) A different rule prevails where all transactions have been *bona fide* closed. (*The Queen ex rel. Armor* v. *Coste*, *Ib.* 290.) It is not enough to disqualify a person to show that he is the agent of the person who is really the contractor. Thus, an agent of an insurance company, paid by salary or commission, who, both before and since the election, had, on behalf of his company, effected insurances on several public buildings, the property of the Corporation, and who at the time of the election had rented two tenements of his own to the Board of School Trustees for Common School purposes, was held not to be disqualified. (*The Queen ex rel. Bugg* v. *Smith*, 1 U. C. L. J. N. S. 129.) The words, "interest in any contract," are not to be construed as including all possible advantage or gain flowing from a contract which somebody else (not being a partner) has with the Corporation. (See *The Queen ex rel. Armor* v. *Coste*, 8 U. C. L. J. 290; *The Queen ex rel. Piddington* v. *Riddell*, 4 Prac. R. 80.) It is doubtful if they can be held to include subcontracts. (See *Le Feuvre* v. *Lankester*, 3 E. & B. 543; see also *Proctor* v. *Manwaring*, 3 B. & A. 145; *Henderson et al* v. *Sherborne*, 2 M. & W. 237; *Barber* v. *Waite*, 1 A. & E. 514.) Had the words been "have any share or interest in, or be in any manner, directly or indirectly, concerned in any contract or bargain," a wider interpretation would have to be given to the section. (See *Towsey* v. *White*, 5 B. & C. 125; *Pope* v. *Backhouse*, 8 Taunt. 239; *Foster* v. *The Oxford, &c. Railway Co.*, 13 C. B. 200; see also Con. Stat. Can, cap. 66, s. 46.) The disqualification does not merely relate to the time of acceptance of office, but to the time of the election. (*The Queen ex rel. Hill* v. *Betts*, 4 Prac. R. 113; *The Queen ex rel. Rollo* v. *Beard*, 1 U. C. L. J. N. S. 126.) To refer the qualification to the time when the person elected might actually take his seat at the Council board, would be wholly at variance with the spirit of the Act, and fatal to this very wholesome provision of the Act as to disqualification. (*Per* Hagarty, J., *Ib.* 128.) The objection to the qualification should be taken at the nomination. (*The Queen ex rel. Tinning* v. *Edgar*, 4 Prac. R. 36; *The Queen ex rel. Adamson* v. *Boyd*, *Ib.* 204; *The Queen ex rel. Ford* v. *McRae*, 5 Prac. R. 309.) Where

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by having a lease of twenty-one years or upwards of any property from the Corporation; (*v*) but no such leaseholder shall vote in the Council on any question affecting any lease from the Corporation, and no such shareholder on any question affecting the company. (*w*) 31 V. c. 30, s. 8.

### Division III.—Of Exemptions.

*Officials and Persons exempted.—Sec. 76.*

Exemptions.

**76.** All persons over sixty years of age; all members and officers of the Legislative Assembly of Ontario, and of the Senate or House of Commons of Canada; all persons in the civil service of the Crown; all Judges not disqualified by the last preceding section; all Coroners; all persons in Priest's orders; Clergymen and Ministers of the Gospel of every denomination; all members of the Law Society of Ontario, whether Barristers or Students; all Attorneys and Solicitors in actual practice; all officers of Courts of Justice; all members of the Medical profession, whether Physicians or Surgeons; all Professors, Masters, Teachers and other members of any University, College or School in Ontario, and all officers and servants thereof; all Millers; and all Firemen belonging to an authorized Fire Company — are

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after notice of disqualification, voters perversely throw away their votes, the candidate of the minority is entitled to the seat. But the notice should in such case be made to appear clear and satisfactory. *The Queen ex rel. Clarke* v. *McMullen*, 9 U. C. Q. B. 467; *The Queen ex rel. Forward* v. *Detlor*, 4 Prac. R. 197; *The Queen ex rel. Adamson* v. *Boyd*, *Ib.* 204.) The notice must be such as to bring home knowledge to the voters, apparently, not only of the fact constituting disqualification, but the law that such fact does disqualify. (*The Queen* v. *Tewkesbury*, 18 L. T. N. S. 851; s. c. L. R. 3 Q. B. 629; see further, *The Queen ex rel. Dexter* v. *Gowan*, 1 Prac. R. 104; *The Queen ex rel. Davis* v. *Carruthers*, *Ib.* 114; *The Queen ex rel. Ford* v. *McRae*, 5 Prac. R. 309; *In re Essex Election*, 9 U. C. L. J. 247.)

(*v*) The law was formerly different on both points. (See *The Queen ex rel. Padwell* v. *Stewart et al*, 2 Prac. R. 18; *The Queen ex rel. Stock* v. *Davis*, 3 U. C. L. J. 128; *The Queen* v. *York*, 2 Q. B. 847; *Simpson* v. *Ready*, 12 M. & W. 736; *The Queen* v. *Francis*, 21 L. J. Q. B. 304; *The Queen ex rel. Mack* v. *Manning*, 4 Prac. R. 73; *The Queen ex rel. Patterson* v. *Clarke*, 5 Prac. R. 337.)

(*w*) A distinction is made between the qualification for office and the right to vote when elected. Though the interest in the particular case specified is not to disqualify, it is to be held sufficient, in the case of the leaseholder, to prevent him voting "on *any* question affecting *any* lease from the Corporation;" and in the case of the shareholder in an incorporated company having dealings with the Council, to prevent him voting "on *any* question affecting" the particular company.

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exempt from being elected or appointed members of a Municipal Council, or to any other Municipal office. (*a*) 29-30 V. c. 51, s. 74.

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## PART III.

### OF MUNICIPAL ELECTIONS.

TITHE I.—ELECTORS.
TITLE II.—ELECTIONS.

### TITLE I.—ELECTORS.

#### DIVISION I.—QUALIFICATION.

*Persons rated on last Assessment Roll. Sec. 77.*
*Amount of Rating requisite. Sec. 78.*
*Where no Assessment Roll. Sec. 79.*
*In respect of what Locality an Elector may vote. Sec. 80, 81.*
*Joint or several Rating on same Property provided for. Sec. 82, 83.*
*Householder, Definition of. Sec. 84.*

Qualification of electors.

**77.** The electors of every Municipality for which there is an Assessment Roll, shall be the freeholders thereof (*b*) in their own right or right of their wives, (*c*) whether resident or not, (*d*) and such of the residents therein for one month next before the election as then are, or whose wives then

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(*a*) The last section contains the disqualifications, and this the exemptions. The difference between a disqualification and an exemption, as regards an individual, is this, that a person disqualified cannot hold office, but a person exempt, even though qualified, is not bound to accept office. The one is an incapacity or disability; the other a privilege. It is an offence at common law for a person, without some legal ground of objection, to refuse to take upon himself an office to which he has been duly elected. (See note *n* to s. 218.) So a qualified person duly elected refusing to accept office, may be summarily convicted and punished. (*Ib.*)

(*b*) The words of section 75 of 29 & 30 Vic. cap. 51, were "the *male* freeholders thereof." These words were continued in Stat. Ont. 31 Vic. cap. 30, s. 9, which re-enacted and amended the former enactment. They are still retained in this section, but in a different part of it. Women are not here, as in England. entitled to the Municipal franchise. (See *The Queen* v. *Tugwell*, L. R. 3 Q. B. 704; see also *The Queen* v. *Harrald*, L. R. 7 Q. B. 361.)

(*c*) See note *k* to s. 71.

(*d*) It is to be observed that residence is not essential to the right of a freeholder to vote. Residence for a month next before the election is, however, expressly made necessary in the case of a householder. Nice questions arise as to when a party can or cannot be

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are householders or tenants in the Municipality; (*e*) al]

said to be a *resident* of a Municipality. A man cannot, within the meaning of the Municipal laws, be said to be resident in *two* Municipalities at the same time. (*Marr* v. *Vienna*, 10 U. C. L. J. 275.) A man's residence is where his home is situate—where his family live. (*The King* v. *Inhabitants of North Curry*, 4 B. & C. 959.) An occasional absence from his home to attend to business in another Municipality, does not make his home less his residence. (*Whithorn* v. *Thomas*, 7 M. & G. 1.) Where A. had a dwelling-house at Bowmanville, where his wife and family lived, but had a saw-mill and store and was postmaster in the township of Cartwright, which occasioned him frequently to visit that place, and who, while there, used to board with one of his men in a house owned by himself. *Held*, that after voting in Bowmanville he had no right to vote in Cartwright. *The Queen ex rel. Taylor* v. *Cæsar*, 11 U. C. Q. B. 461.) Mere colourable residence is in no case sufficient. (*The King* v. *Duke of Richmond*, 6 T. R. 560.) There is no absolute rule for ascertaining when a a party is a resident: it is a question to be determined in each case according to its circumstances. As to what is sufficient, see *The King* v. *Sergent*, 5 T. R. 466; *Bruce* v. *Bruce*, 2 B. & P. 229, note; *The King* v. *Mitchell*, 10 East. 511; *Whithorn* v. *Thomas*, 7 M. & G. 1; *The Queen ex rel. Forward* v. *Bartels*, 7 U. C. C. P. 533; *The Queen* v. *Boycott*, 14 L. T. N. S. 599; *The Queen* v. *Exeter*, L. R. 4 Q. B. 110; *Manning* v. *Manning*, L. R. 2 P. & D. 223; *Taylor* v. *The Overseers of the Parish of St. Mary Abbott*, L. R. 6 C. P. 309; *Bond* v. *The Overseers of the Parish of St. George, Hanover Square, Ib.* 312; *The Queen* v. *The Guardians of St. Ives Union*, L. R. 7 Q. B. 467; *Wilton* v. *Falmouth*, 3 Shepley, 479; *State* v. *Frest*, 4 Harrington, 558; *State* v. *De Casinova*, 1 Texas, 401; see further, note *w* to sec. 41 of the Assessment Act.)

(*e*) The persons entitled to vote by this section are "freeholders," "householders," or "tenants."

Questions often arise as between father and son, or other relatives, as to the position they hold to each other in respect to the homestead. Sons in this country often live with their fathers to a ripe age, on the promise or in the expectation of receiving the homestead "when the old man dies." After the "old man," through lapse of years or bodily infirmity, is disabled from doing much if anything in the tillage of the farm, he surrenders control to the son, "as the place is to be his." When these things happen, nice questions present themselves as to "ownership" and "occupancy." In three cases recently tried under the Election Law for Ontario, several such questions were presented for decision, and after much deliberation decided. Only one of these cases (*The Stormont Case*, 7 U. C. L. J. N. S. 213) has been reported in full. Of the second case (*The Brockville Case*), we have some brief head notes published. (7 U.C. L. J. N. S. 221.) Of the third case (*The South Grenville Case*), which was as fruitful as either of the other two, we have no published report whatever. The Legislature of Ontario has evinced a very laudable desire to make their election laws known. If there be the same desire that the laws should be understood, some appropriation ought to be made for the publication of cases decided under these laws. The circulation of such reports among the profession would be too small to justify the publication of the reports as a matter of private enterprise. This being so, the Legislature really ought to do whatever is necessary to supply a very

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which electors shall be natural-born or naturalized subjects

necessary want. From such materials as the Editor has been able to collect, he subjoins a statement of some points decided in some of the above mentioned cases as to the subject in hand.

The general rule is, that a person living with his father, having no interest of any kind in the house or land, is not entitled to be assessed either as owner, tenant or occupant. (*The Queen ex rel. McVean* v. *Graham*, 7 U. C. L. J. 125.) But when it is proved that an agreement exists (verbal or otherwise), that the son should have one-third or one-half the crops as his own, and such agreement is *bona fide* acted on, the son is entitled to be on the Roll. (*The Brockville Case*, 7 U.C.L. J. N.S. 221.) So where it is proved that for some time past the owner has given up the whole management of the farm to his son, retaining his right to be supported from the product of the place, the son dealing with the crops as his own, and disposing of them to his own use. (*Ib.*) A clearly established course of dealing or conduct for years as to management and disposition of crops, and acts done by the son in the management of the farm, held sufficient to establish an interest in the crops in the son, though the evidence of any original agreement or bargain be not clear. (*Ib.*) If the evidence would warrant the jury finding the crops (say in the year preceding the last assessment) to be the property of the voter, the son is rightly placed on the Roll. (*Ib.*) Occupancy to the use and benefit of the occupant is sufficient. (*Ib.*) In a milling business, where the agreement between the father and the son was, that if the son would take charge of the mill and manage the business, he should have a share of the profits, and the son in fact solely managed the business, keeping possession of the mill, and applying a portion of the proceeds to his own use, it was held that the son had such an interest in the business, and, while the business lasted, such an interest in the land, as entitled him to be on the Roll. (*The Stormont Case*, 7 U. C. L. J. N. S. 213.) So where the voter had been originally (before 1865 or 1866) put upon the Assessment Roll merely to give him a vote, but by a subsequent arrangement with his father, made in 1865 or 1866, he was to support the father, and apply the rest of the proceeds to his own support, it was held that if he had been put on originally merely for the purpose of giving a vote, and that was the vote questioned, it would have been bad, but being continued several years after he really became the occupant for his own benefit, he was entitled to be on the roll, though originally the assessment began in his name merely to qualify him. (*Ib.*) Where the voter was the equitable owner, the deed being taken in the father's name, but the son furnishing the money, the father in occupation with the assent of his son, and the proceeds not divided, it was held, that being the equitable owner, notwithstanding the deed to the father, he had the right to be on the Roll. (*Ib.*) So where a verbal agreement was made between the voter and his father in January, 1870, and on this agreement the voter from that time had exercised control, and took the proceeds to his own use, although the deed was not executed until September following. (*Ib.*) But the rule is different where father and son live together on the father's farm, and the father is in fact the principal, to whom money is paid, and who distributes it, and the son has no agreement binding on the father to compel him to give the son a share of the proceeds of the farm, or to cultivate a share of the land, and the son merely receives what the father's sense of justice dictates (*Ib.*); or where a certain

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occupancy was proved on the part of the son distinct from that of the father, but no agreement to entitle the son to a share of the profits, and the son merely worked with the rest of the family for their common benefit. (*Ib.*) So where the voter and his son leased certain property, and the lease was drawn in the son's name alone, and when the crops were reaped the son claimed they belonged to him solely, the voter owning other property, but being assessed for this only and voting on it. (*Ib.*) Where the voter was the tenant of certain property belonging to his father-in-law, and before the expiration of his tenancy, the father-in-law, with the consent of the voter (the latter being a witness to the lease), leased the property to another, the voter's lease not expiring until November, and the new lease being made on the 28th March, 1870, held, that after the surrender by the lease to which he was a subscribing witness, he ceased to be a tenant on the 28th March, 1870, and that to entitle him to vote, he must have the qualification at the time of the final revision of the Assessment Roll, though not necessarily at the time he voted, so long as he was still a resident of the electoral division. (*Ib.*) Where the voter had only received a deed of the property on which he voted on the 16th August, 1870, but previous to that date had been assessed for and paid taxes on the place, but not owning it; held, that not possessing the qualification at the time he was assessed, or at the final revision of the Roll, he was not entitled to vote. (*Ib.*) Where the father had made a will in his son's favour, and told the son if he would work the place and support the family, he would give it to him, and the entire management remained in the son's hands from that time, the property being assessed in both names, the profits to be applied to pay the debt due on the place, it was held that, as the understanding was that the son worked the place for the support of the family, and beyond that for the benefit of the estate, which he expected to possess under his father's will, he did not hold immediately to his own use and benefit, and was not entitled to vote. (*Ib*) Where the owner died intestate, and the estate descended to several children, only the interest of the actual occupants is generally to be considered. (*The Brockville Case*, 7 U. C. L. J. N. S. 221.) Unless the occupant be shown to be receiving the rents and profits, and on account of a party interested, though not in actual possession, a mere liability to account is not to be considered. (*Ib.*) The widow of an intestate owner continuing to live on the property with her children, who own the estate, and work and manage it, should not, till her dower be assigned, be assessed, nor should any interest of hers be deducted from the whole assessed value, she not having the management of the estate. (*Ib.*) Where on the trial of an election petition, the objection taken was, that the voter was not at the time of the final revision of the Assessment Roll the *bona fide* owner, occupant or tenant of the property in respect of which he voted, and the evidence showed a *joint* occupancy on the part of the voter and his father on land rated at $240, it was held that the notice given did not point to the objection that if the parties were joint occupants, they were insufficiently rated. (*The Stormont Case*, 7 U. C. L. J. N. S. 213.)

The occupant of any separate portion of a house having a distinct communication with a road or street by an outer door, is a householder (sec. 84); and it seems to be now settled in England, where a house is let out in separate portions to different tenants, and the owner or landlord does not reside on the premises, though there is but one outer door common to all the tenants, that each distinct

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of Her Majesty, (*f*) and males of the full age of twenty-one years, (*g*) and (if not voting in respect of a freehold)

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portion so let is the house of such occupier. (See *The King* v. *Trapshaw*, 1 Leach. 427; *The King* v. *Carrell*, *Ib.* 237; *The King* v. *Bailey*, 1 Moody, C. C. 23; and Littledale, J., in *The King* v. *Eye*, 9 A. & E. 680; see also *The Queen ex rel. Forward* v. *Bartels*, 7 U. C. C. P. 533; *In re Cook and Humber*, 11 C. B. N. S. 33; *In re Thompson and Ward*, L. R. 6 C. P. 327; *In re Stamper* v. *The Overseers of Sunderland*, L. R. 3 C. P. 388; *In re Townshend and Overseers of St. Mary-le-bone*, L. R. 7 C. P. 143; *In re Ford* v. *Boon*, *Ib.* 150; *In re Moger* v. *Escott*, *Ib.* 158; *In re Bendle* v. *Watson*, *Ib.* 163.) A person is not the less a householder because he lets a portion of his house to lodgers. (*Phillip's Case*, Alcock's Registration Cases, 20; *Duigenan's Case*, *Ib.* 114; *The Queen* v. *Deighton*, 5 Q. B. 896.) No lodger, though occupying the principal part of the house, is ever rated. The owner, however small the part may be which is reserved to himself, is in such case deemed the occupier of the whole. (*The King* v. *Eyles*, Cald. 414.) A person occupying apartments in a jail held not to be a householder. (*The Queen ex rel. Charles* v, *Lewis, et al*, 2 Cham. R. 171.)

(*f*) It is to be presumed that resident and assessed inhabitants of this Province are British subjects till something is shown to the contrary, from which it can be determined that they are aliens. (*The Queen ex rel. Carroll* v. *Beckwith et al*, 1 Prac. R. 284,) It is not sufficient for relator to swear that certain voters are aliens, without giving particular facts to show that they are aliens, and how aliens, as by having been born in a certain place named, out of the allegiance of the British Crown. (*Ib.*) A person born in New York in 1830, the son of a British subject, who had emigrated from Ireland a short time previously, and a year or two after his birth came to Upper Canada, and ever since resided here, held to be a British subject within the meaning of the act. (*The Queen ex rel. McVean* v. *Graham*, 7 U. C. L. J. 125.) But a person born in the United States before the Revolution, who continued to reside there afterwards, was held to be an alien. (*Doe dem. Patterson* v. *Davis*, 5 O. S. 494.) The son of a British subject who was married to an alien residing out of British possessions at the time of his birth, was held to be an alien. (*Doe Robinson* v. *Clarke*, 1 U. C. Q. B. 37.) But the son of an alien once naturalized continues a British subject notwithstanding the residence of his father beyond British allegiance. (*Doe dem. Hay* v. *Hunt*, 11 U. C. Q. B. 367. See further, *Montgomery* v. *Graham*, 31 U. C. Q. B. 57.) Where the voter was born in the United States, both his parents being British-born subjects, his father and grandfather being U. E. Loyalists, and the voter residing nearly all his life in Canada, held entitled to vote. (*The Stormont Case*, 7 U. C. L. J. N. S. 213.)

(*g*) Full age in male or female is twenty-one years, and is completed on the day preceding the anniversary of a person's birth. (*Anon*, 1 Salk. 44; *Toder* v. *Sansam*, 1 Brown P. C. 468.) If therefore one is born on 1st January, he is of age to do any legal act on the morning of the last day of December, though he may not have lived twenty-one years by nearly 48 hours. (Tomlin "Infant," 1.) Upon a question of age of a voter, the written memorandum of the clergyman who married his parents was held better evidence than the memory of individuals, unaccompanied by such memorandum. (*The Queen ex rel. Forward* v. *Bartels*, 7 U. C. C. P. 533.)

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resident (*h*) within the Municipality for which the vote is being taken for one month next before the election; (*i*) and all which electors shall have been severally rated on the last revised Assessment Roll for real property in the Municipality, held in their own right or that of their wives as freeholders, householders or tenants, (*k*) and have received no reward, nor have any expectation of reward for voting, (*l*) and are named or purported to be named in the list of electors; (*m*) such rating shall be absolute and final, and

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(*h*) See note *d* to this section.

(*i*) The nomination is the commencement of the election. (See note *b* to sec. 102.)

(*k*) See note *e* to this section.

(*l*) This is a new provision designed to prevent corrupt practices at Municipal elections. (See sec. 153, and following sections and notes thereto.

(*m*) The franchise is not to be lost to any one who is really entitled to vote, if his right can be sustained in a reasonable view of the requirements of the act. (*The Queen ex rel. Chambers* v. *Allison*, 1 U. C. L. J. N. S. 244.) The inclination of the Courts is in every way to favor the franchise. (*The Queen ex rel. Ford* v. *Cottingham*, 1 U. C. L. J. N. S. 214.) The rating has been held sufficient where the surnames were correct, though the Christian names were erroneous. *The Queen ex rel. Chambers* v. *Allison*, 1 U. C. L. J. N. S. 244.) Thus "Wilson Wilson" for "William Wilson." So "Simond Faulkner," for "Alexander Faulkner." (*Ib.*) And "Thomas Sanderson," held *idem sonans* with "Thomas Anderson," so as to entitle the person bearing the latter name to vote. (*Ib.*) Any error in assessing as owner, tenant or occupant, is immaterial if the voter be qualified in any of these characters. (*The Stormont Case*, 7 U. C. L. J. N. S. 213; *The Brockville Case*, *Ib.* 221.) If a man be duly assessed for a named property on the Roll, even though there was a clerical error in describing such property in the voters' list, or erroneously setting down another property on the voters' list, if no question or difficulty arose at the poll as to the taking the oath, the vote will not be struck off on a scrutiny. (*Ib.*) When a voter, properly assessed, who was accidentally omitted from the voters' list for polling sub-division No. 1, where his property lay, and entered in the voters' list for sub-division No. 2, voted without question in No. 1, though not on the list, vote held good. (*Ib.*) It is not only necessary that the freeholder or householder should be rated as such, but, at the time of the election, hold the property in respect of which he is rated (*The Queen ex rel. Lutz* v. *Hopkins*, 7 U. C. L. J. 152; *Anon.*, 8 U. C. L. J. 76), and the property must be held in the right of the elector or that of his wife, and not simply in a representative capacity as executor, administrator, or agent. (*The Queen ex rel. Stock* v. *Davis*, 3 U. C. L. J. 128; see further, note *o* to sec. 71.) A Municipal Council has not, of course, any power to declare a qualification of voters different from this Act. (*In re Bell and Manvers*, 3 U. C. C. P. 399; see further, *The King* v. *Speneer*, 3 Burr. 1827; *Newling* v. *Francis*, 3 T. R. 189; *The King* v. *Bumstead*, 2 B. & Ad. 699; *The King* v. *Chitty*, 5 A. & E. 609; *Commonwealth* v. *Woelper et al*, 3 S. & R. 29; *Petty et al* v. *Tooker*, 21 N. Y. 267.)

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shall not be questioned either by any Returning Officer, or on any application to set aside any election. (*n*) And in Cities, Towns, Incorporated Villages, and Townships that may pass by-laws requiring this to be done, the electors shall also have paid all Municipal taxes due by them respectively, on or before the fourteenth day of December next preceding the election. (*o*) *Vide* 29-30 V. c. 51, s. 75; 31 V. c. 30, s. 9.

In cities, towns and incorporated villages.

**78.** In Cities, Towns, Townships and Incorporated Villages, such real property, whether freehold or leasehold, or partly each (*p*), must have been so rated as of at least the actual value following: (*q*)

In Townships—One hundred dollars.
In Incorporated Villages—Two hundred dollars.
In Towns—Three hundred dollars.
In Cities—Four hundred dollars. 31 V. c. 30, s. 10.

In newly erected townships not having any assessment roll.

**79.** At the first election for a newly-erected Township, for which there is no separate Assessment-roll (*r*), every

(*n*) This had previously been held to be the law by several judges under the old Act in almost the same language as that here used. (*The Queen ex rel. Ford* v. *Cottingham*, 1 U. C. L. J. N. S. 214; *The Queen ex rel. Johnson* v. *Price*, and *The Queen ex rel. Milligan* v. *Johnston*, *Ib.* 217, note; *The Queen ex rel. Chambers* v. *Allison*, *Ib.* 244; see further, *The Queen* v. *Tugwell*, L. R. 3 Q. B. 704.

(*o*) The object of such a provision as the present is, in the case of intending voters, to enforce payment of taxes in the year in which they accrue, and under any circumstances before the election of the ensuing year. In the 29-30 Vic. cap. 51, s. 75, the provision was absolute, making it essential to the qualification of a voter that he should have paid, on or before the sixteenth day of December next preceding the election, all Municipal taxes due by him. That portion of the section was dropped when the section was amended and re-enacted by Stat. Ont. 31 Vic. cap. 30, s. 9. It is now restored in a modified form. Instead of being an absolute qualification in all Municipalities, it is only to be a qualification in such Cities, Towns, Incorporated Villages, and Townships that may pass by-laws requiring it. The Treasurer, where such a by-law exists, should make a return of the defaulters to the Clerk, that the Clerk may omit their names when preparing the voters' list. (See sec. 109, at the end.)

(*p*) See notes *m* and *n* to sec. 71.

(*q*) Formerly, for Municipal purposes, real property was rated at annual value in Cities, Towns, and Incorporated Villages, and at actual value in Townships. Since 1866 the distinction has been abolished. Actual value is now the rule in all local Municipalities for all purposes. (See *Frontenac* v. *Kingston*, 30 U. C. Q. B. 584; s. c. 32 U. C. Q. B. 348.

(*r*) No provision is made as to the qualification of voters where the limits of a Town or Village have been extended so as to embrace

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resident male inhabitant, though not previously assessed, shall be entitled to vote if he possesses the other qualifications above mentioned, and has at the time of the election sufficient property to have entitled him to vote if he had been rated for such property; (*s*) and every person so claiming to vote shall name the property on which he votes, and the Returning Officer, at the request of any candidate or voter, shall note the property in his poll-book opposite the voter's name; (*t*) and at the first election for a newly-erected Village, the electors shall be those who would be entitled to vote in the Township or Townships in which the said village is situated, the Clerk or Clerks respectively having furnished from the last revised Assessment-roll a list of the names of those so qualified to vote. (*u*) 29-30 V. c. 51, s. 77.

Wards in which electors shall vote.

**80.** In Towns and Cities, every elector may vote in each Ward in which he has been rated for the necessary property qualification; but in the case of Mayor of Cities, Mayor, Reeve or Deputy Reeve of Towns, the elector is limited to one vote. (*a*) 29-30 V. c. 51, s. 78.

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a portion of the Township in which situate. The Roll of the Town or Village, before the extension, will not in such a case embrace all the persons entitled to vote. Some provision is needed to authorize the Returning Officer to procure and to use so much of the Roll of the Township as may be by the extension embraced within the limits of the Town. Such was the old law. (12 Vic. cap. 81, s. 57.) It was by inadvertence dropped by the 14-15 Vic. cap. 109, Sch. A, No. 11, (See remarks of Robinson, C. J., in *The Queen ex rel. Carroll* v. *Beckwith*, 1 Prac. R. 278,) and has not been revived. In the case of a newly-erected Village, ample provision is made at the end of this section (see sec. 86) as to the time of holding the election. Where the Roll of the Township was used at the election without objection, and though objected to in the argument of a *quo warranto* summons, was not set forth in the statement as a ground of objection to the election, the presiding judge refused to entertain it. (*Ib.*)

(*s*) In the case of a newly-erected Township there can be no Assessment Roll for such Township, qualification in fact, without rating on any Roll, is therefore all that is required in such a case. (See sec. 77 and notes thereto, as to the qualification of electors.)

(*t*) Every voter is required to name the property on which he votes, but the Returning Officer is only bound to note the property in his poll book at the request of any candidate or voter.

(*u*) This provision, so far as it goes, is a very proper and necessary one; but the Act, as already pointed out, is still defective, in not making provision for the qualification of voters where the limits of a Town or Village have been extended so as to embrace a portion of the Township in which situate. (See note *r* to this section.)

(*a*) Before the Act of 1866, it was held that a voter entitled to vote in the ward in which he resided, could not vote in any other

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Electoral division in which electors may vote.

**81.** In Townships and Incorporated Villages divided into Electoral Divisions or Wards, no elector shall vote in more than one Electoral Division or Ward for the same candidate. (*b*) 29-30 V. c. 51, s. 78, sub. 1.

When owner and occupant both rated.

**82.** In case both the owner and occupant (*c*) of any real property are rated severally but not jointly therefor, both shall be deemed rated within this Act. (*d*) 29-30 V. c. 51, s. 79.

When joint owners or occupants rated together.

**83.** When any real property is owned or occupied jointly by two or more persons, and is rated at an amount sufficient, if equally divided between them, to give a qualification to each, then each shall be deemed rated within this Act, otherwise none of them shall be deemed so rated. (*f*) 31 V. c. 30, s. 11.

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ward. (*Anon.* 8 U. C. L. J. 76.) That Act enabled every elector in a *Town* or *Village* to vote in *each* ward in which he had been rated for the necessary property qualification. This section is a re-enactment of it. The meaning is, that a voter is no longer restricted to one vote, but, if qualified in several wards, may vote in each of such wards, except in the case of the election of Mayors of Cities, Reeves or Deputy Reeves of Towns, who are elected by the entire vote of the Municipality. The latter exception is a new provision, but was the generally received interpretation of the old Act. In England, voters have still to select the Ward in which they intend to vote, and are restricted to that Ward. (See *The Queen* v. *Tugwell*, L. R. 3 Q. B. 704.) In this country a similar rule prevails in regard to Townships and Incorporated Villages. (See sec. 81).

(*b*) See note *a* to sec. 80.

(*c*) See notes *e* and *f* to sec. 77.

(*d*) Each may vote in respect of his interest, when rated severally, the one as proprietor if a freeholder, and the other as tenant if a resident householder. (See sec. 77.) It is not necessary that the property should be assessed exclusively in the name of the person possessed to his own use. A landlord is so assessed where tenants occupy the premises; and he may, for purposes of qualification as a candidate, put together real properties, some occupied by himself and some by his tenants, to make up the assessed value required by the statute. (*The Queen ex rel. Shaw* v. *Mackenzie*, 2 Cham. R. 36.)

(*f*) This apparently applies to the case of joint owners or joint tenants. If each be rated for an amount sufficient to give a qualification, then each is to be deemed rated within the meaning of the section. The section apparently applies as much to candidates as electors, though placed under the head of "Electors." (*The Queen ex rel. McGregor* v. *Ker*, 7 U. C. L. J. 67.) Where one of two partners, jointly interested in a property as co-tenants under a yearly tenancy, left the partnership before the day of nomination, and a new lease was afterwards granted to the remaining partner and a new partner, the retiring partner was held not to be qualified in respect of property under this Act. (*The Queen ex rel. Adamson* v. *Boyd*, 4 Prac. R. 204.)

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**84.** Every occupant of a separate portion of a house, such portion having a distinct communication with a public road or street by an outer door, shall be deemed a householder within this Act. (*g*) 29-30 V. c. 51, s. 166. Householder defined.

## TITLE II.—ELECTIONS.

DIVISION I.—TIME AND PLACE OF HOLDING.
DIVISION II.—RETURNING OFFICERS.
DIVISION III.—OATHS TO BE TAKEN.
DIVISION IV.—PROCEEDINGS THEREAT.
DIVISION V.—VACANCIES IN COUNCIL.
DIVISION VI.—CONTROVERTED ELECTIONS.
DIVISION VII.—CORRUPT PRACTICES, TO PREVENT.

### DIVISION I.—TIME AND PLACE OF HOLDING.

*Time in the respective Municipalities. Sec. 85.*
*In new or altered Municipalities. Sec. 86.*
*Place, how fixed. Sec. 87.*
*In case of separated Townships. Sec. 88, 89.*
*Election Divisions. Sec. 90, 91.*
*Election to be held in Municipality. Sec. 92.*
*Where Elections may not be held. Sec. 93.*

**85.** The electors of every Municipality (except a County) shall elect annually, on the first Monday in January, (*h*) the members of the Council of the Municipality, except such members as may have been elected at the nomination (*i*); and the persons so elected shall hold office until their successors are elected or appointed and sworn into office, and the new Council is organized. (*j*) 29-30 V. c. 51, s. 105; 31 V. c. 30, s. 20; 33 V. c. 26, s. 3. Elections to be held annually for members of council of municipalities (except counties). Term of office.

(*g*) See note *e* to sec. 77.

(*h*) The time deserves attention. Where time is fixed for the holding of an election it is in general essential, though many of the details as to the conduct of elections may be looked upon as only directory. (See *Pennsylvania District Election*, 2 Par. (Pa.) 526; *Clarke's Case, Ib.* 521; *Commonwealth* v. *Commissioners*, 5 Rawle, 75; see also *People* v. *Brenham*, 3 Cal. 477; *People* v. *Fairbury*, 51 Ill. 149; *Haynes* v. *Washington County*, 19 Ill. 66; *Coles County* v. *Allison*, 23 Ill. 437.)

(*i*) See sec. 106.

(*j*) Where in the charter or organic law of a Corporation there is an express or implied restriction upon the time of holding office, as that the officers shall be annually elected on a particular day . . . . in such case they cannot hold over beyond the next election day. . . . . But where by the constitution of the Corporation they are elected for a term and until their successors are elected, "they may continue to hold and exercise their offices after the expiration of the

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First elections where corporations are newly erected or extended.

**86.** In case of the Incorporation of a new Township or Union of Townships; or of the separation of a Junior Township from a Union of Townships; or of the erection of a locality into an Incorporated Village; or of the erection of a Village into a Town or of a Town into a City; or of an additional tract of land being added to an Incorporated Village, Town, or City, or in case of a new division into Wards of a Town or City, (*k*) the first election under the proclamation or By-law by which the change was effected, shall take place on the first Monday in January next after the end of three months from the date of the proclamation, or from the passing of the By-law by which the change is made, and until such day the change shall not go into effect. (*l*) 39-30 V. c. 51, s. 83.

Times of elections.

To be fixed by by-law for municipalities.

**87.** The Council of every City, Town and Village Municipality (including a Village newly erected into a Town, and a Town newly erected into a City), shall from time to time, by By-law, (*m*) appoint the place or places for holding the next ensuing Municipal election, otherwise the election shall be held at the place or places at which the last election for the Municipality or Wards or Electoral Divisions was held.(*n*) 29-30 V. c. 51, s. 85.

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year until they are superseded by the election of other persons in their places." (*Per* Perkins, J., in *Tuley* v. *State*, 1 Ind. (Cart.) 500, 502; see further, *King* v. *Tregenny*, 6 Ven. Abr. 296; *Corporation of Banbury*, 10 Mod. 346; *The King* v. *Pasmore*, 3 T. R. 199; *Foot* v. *Prowse*, Str. 625; *The King* v. *Poole*, Cas. Temp. Hardw. 23; *Louisville* v. *Higdon*, 2 Met. (Ky.) 526; *King* v. *Lisle*, Andrews, 163; *McCall* v. *Manufacturing Company*, 6 Conn. 428; *Kelsey* v. *Wright*, 1 Root. 83; *Weir* v. *Bush*, 4 Litt. (Ky.) 429; *People* v. *Runkle*, 9 Johns. 147; *Vernon Society* v. *Hills*, 6 Cow. 23; *Slee* v. *Bloom*, 5 Johns. Ch. 366; *Bank* v. *Petway*, 3 Humph. (Tenn.) 522; *Stewart* v. *State*, 4 Ind. 396; *Beck* v. *Hanscom*, 9 Fost. (N. H.) 213; *Cocke* v. *Halsey*, 16 Pet. 71; *Chandler* v. *Bradish*, 23 Vt. 416; *School District* v. *Atherton*, 12 Met. 105; *Dow* v. *Bullock*, 13 Gray, 136; *People* v. *Fairbury*, 51 Ill. 149; see further, *The Queen* v. *Owens*, 2 E. & E. 86; *Frost* v. *Chester*, 5 E. & B. 531.)

(*k*) No provision is made as to a voters' list where the limits of a Town or Village have been so extended as to embrace a portion of the adjoining Township. (See note *r* to sec. 79.)

(*l*) The whole three months must expire. The day of the issue of the proclamation or passing of the By-law as well as the day of the election, must be excluded from the computation of time. (See *Blunt* v. *Heslop*, 8 A. & E. 577; see further, note *h* to sec. 85.)

(*m*) The appointment of the place by resolution would be a nullity. (*The Queen ex rel. Allemaing* v. *Zoeger*, 1 Prac. R. 219.)

(*n*) One Robert Gillis had a farm through which ran the division line between Wards Nos. 2 and 3. His house stood on that part of

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**88.** When in any year a Junior Township of a Union has one hundred resident freeholders and householders on the then last revised Assessment Roll, the Council of the County shall, by a By-law, to be passed before the thirty-first day of October in the same year, (*o*) fix the place for holding the first annual election of Councillors in a Township, and appoint a Returning Officer for holding the same, and otherwise provide for the due holding of the election according to law. (*p*) 29-30 V. c. 51, s. 91. First election in junior townships after separation.

**89.** In case of the separation of a Union of Townships, the existing division into Wards, if any, shall cease, as if the same had been duly abolished by By-law, and the elections of Councillors shall be by general vote, until the Township or Townships are divided into Electoral Divisions or Wards under the provisions of this Act. (*q*) 29-30 V. c. 51, s. 92. Existing ward divisions in united townships to cease on dissolution of union.

**90.** The election in Townships and Incorporated Villages of Reeves, Deputy Reeves and Councillors, shall be by general vote, except in Townships divided into Wards, and shall be held at the place or places where the last meeting of the Council was held, or in such other place or places as may be from time to time fixed by By-law. (*r*) 29-30 V. c. 51, s. 93. Election of reeves, &c., in townships and incorporated villages to be by general vote.

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the farm included in Ward No. 2, but his barn on the part in Ward No. 3. The Township Council passed a By-law that the election of Township Councillors, for "Ward No. 3," should be held at "Robert Gillis'." *Held*, that the By-law must be read as meaning some part of his property in Ward No. 3, and that as the election was shown to have taken place in the house without the limits of the Ward, it was void. (*The Queen ex rel. Preston* v. *Preston*, 2 Cham. R. 178.)

(*o*) The time for doing the act authorized being limited, the act cannot be done after the day named, unless the language used is to be construed as directory only. (*Davison et al.* v. *Gill*, 1 East. 64.) This would appear to be a continuing provision, liable to be brought into play in any year by By-law passed before 31st October.

(*p*) The By-law ought to—

1. Fix a place for holding the first annual election;

2. Appoint a Returning Officer for holding the same;

3. And otherwise provide for the due holding of the election according to law.

(*q*) See note *a* to sec. 80.

(*r*) In the first place, it will be observed that Reeves and Deputy Reeves, as well as Councillors, are to be elected by the people, and in the second place, that the election is to be by general vote. Before 1866, Councillors only were elected by the people, and the Councillors then elected the Reeve and Deputy Reeve. Before 1866



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Upon petition the council may by by-law divide township into wards, &c.

**91.** In case a majority of the qualified electors of a Township on the last revised Assessment Roll do petition the Council of the Township to divide the Township into Wards, or to abolish or alter any then existing division into Wards, the Council shall, within one month thereafter, pass a By-law to give effect to such petition; (*s*) and if such petition is for division into Wards, shall divide such Townships into Wards, having regard to the number of electors in each Ward, being as nearly equal as may be, and the number of Wards shall be four in all cases; (*t*) and where the Township is divided into Wards, and is entitled to one or more Deputy Reeves, the Councillors shall, at their first meeting, elect from amongst themselves such Deputy-Reeve or Reeves. (*u*)

Election of deputy reeves, &c., in such case.

Elections where to be held.

**92.** Every election shall be held in the Municipality to which the same relates. (*a*) 29-30 V. c. 51, s. 84.

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also, where there was an existing division of a Township or Incorporated Village into Wards, the election was had for a particular Councillor in each Ward, and not by general vote. The intention of having Reeves and Deputy Reeves elected by the people, is to prevent men by combining in small bodies, in effect, to elect themselves to these offices. The intention of having a general vote is to destroy the sectional strife about the expenditure of money, which often arises where each Councillor looks upon himself as a representative of a particular Ward and not of the whole Township. This section is in effect a re-enactment of the Act of 1866 (29-30 Vic. cap. 51, s. 92). It does not apply where a Township is divided into Wards, as to which see sec. 91.

(*s*) This is a new provision. It in effect provides for direct legislation by the electors themselves in the matter to which the section has reference. It is not in the discretion of the Council to pass or refuse to pass a By-law dividing a Township into Wards, or abolishing that division, provided a majority of the qualified electors petition that a particular course be adopted. In the event of such a petition being presented, it is made the duty of the Council not merely to pass the required By-law, but to do so "within one month" after the presentation of the petition.

(*t*) The power is here limited. There must be in all cases at least four Wards. The number of electors in each Ward should be as nearly as possible equal. Population rather than geographical situation is to be regarded.

(*u*) The rule is different where one Township is not divided into Wards. In such case the Reeves and Deputy Reeves, as well as Councillors, are elected by the people. (See sec. 90.)

(*a*) It is only proper that the election for each Municipality should, for the convenience of voters, be held within the limits of that Municipality. Cities, Towns and Incorporated Villages are quite distinct from and independent of the Townships in which situate. It is

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**93.** No election of Township Councillors shall be held within any City, Town or Incorporated Village; (*b*) nor shall any election for a Municipality, or any Ward thereof, be held in a tavern or in a house of public entertainment licensed to sell spirituous or fermented liquors. (*c*) 29-30 V. c. 51, s. 82. Elections where to be held. Not to be held in taverns &c.

DIVISION II.—RETURNING OFFICERS.

*When Election by Divisions, who to be. Sec. 94.*
*When not, who ex officio. Sec. 95.*
*Absence, Provision for. Sec. 96.*
*Authority of. Sec. 97.*

**94.** The Council of every Municipality in which the election is to be by Wards or Electoral Divisions, shall from time to time, by By-law, appoint Returning Officers to hold the next ensuing elections. (*d*) 29-30 V. c. 51, s. 94. Returning officers for elections by wards or electoral divisions.

**95.** In the case of a Municipality in which the election is not to be by Wards or Electoral Divisions, the Clerk shall be the Returning Officer at all elections after the first. (*e*) 29-30 V. c. 51. s. 95. Returning officer for elections not by wards or electoral divisions.

**96.** In case, at the time appointed for holding an election, the person appointed to be Returning Officer has died, or does not attend to hold the election within an hour after the time appointed, or in case no Returning Officer has been appointed, the electors present at the place for holding the election may choose from amongst themselves a Returning The absence of the returning officer provided for.

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therefore provided by the next section, that no election of Township Councillors shall be held within any City, Town or Incorporated Village.

(*b*) See note *a* to sec. 92.

(*c*) There may be a tavern where spirituous liquors are sold, which is not licensed to sell spirituous liquors. It is doubtful whether or not the words "licensed to sell spirituous liquors" extend to more than the immediate antecedent house of public entertainment. (See note *t* to sec. 75.) Contravention of the statute would, it is believed, invalidate the election. (See *The Queen ex rel. Allemaing* v. *Zoeger*, 1 Prac. R. 219; *The Queen ex rel. Preston* v. *Preston*, 2 Cham. R. 178.)

(*d*) An appointment by resolution not sufficient. (*The Queen ex rel. Allenmaing* v. *Zoeger*, 1 Prac. R. 219.) As to the general conduct of a Returning Officer, see note *f* to sec. 96.

(*e*) Where the election is to be by Wards or Electoral Divisions, the Township Councils appoint Returning Officers (sec. 94); but where there are no Wards or Electoral Divisions, it is here provided that the Clerk shall be the Returning Officer.

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Upon petition the council may by by-law divide township into wards, &c.

**91.** In case a majority of the qualified [illegible] Township on the last revised Assessment Roll [illegible] the Council of the Township to divide the [illegible] Wards, or to abolish or alter any then existing [illegible] Wards, the Council shall, within one month [illegible] a By-law to give effect to such petition; (s) [illegible] tion is for division into Wards, shall divide [illegible] into Wards, having regard to the number of [illegible] Ward, being as nearly equal as may be, [illegible] of Wards shall be four in all cases; (t)

Election of deputy reeves, &c., in such case.

Township is divided into Wards, and is [illegible] more Deputy Reeves, the Councillors [illegible] meeting, elect from amongst themselves [illegible] or Reeves. (u)

Elections where to be held.

**92.** Every election shall be held in [illegible] which the same relates. (a) 29-30 V. [illegible]

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also, where there was an existing division [illegible] porated Village into Wards, the election [illegible] Councillor in each Ward, and not by gener[illegible] having Reeves and Deputy Reeves elect[illegible] vent men by combining in small bodies, f[illegible] to these offices. The intention of having [illegible] the sectional strife about the expendi[illegible] arises where each Councillor looks upo[illegible] of a particular Ward and not of the wh[illegible] is in effect a re-enactment of the Act of 1[illegible] It does not apply where a Township [illegible] which see sec. 91.

(s) This is a new provision. T[illegible] legislation by the [illegible] section has ref[illegible] to pass or refus[illegible] or abolishing [illegible] election petit[illegible] of such a peti[illegible] and merely a [illegible]

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30 V. c. 51, s. 99.

OATHS.

*99.*

*100.*

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natural-born or naturalized
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Village or Ward (as the case
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or Deputy Reeve) that he has
ere in the Municipality for the
r Deputy Reeve (as the case may
directly or indirectly received any
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the election; (*m*) that he is a free-
(or right of his wife, as the case may
ery case that he is the person named,
med, in the list of the electors; (*o*)

Oaths, &c., that may be put to person claiming to vote as a freeholder.

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t is apprehended, though not so expressed,
of competent jurisdiction, for instance in a
*rash q. t.* v. *Taggart*, 16 U. C. C. P. 415.)
77.

ho receives illegal votes, not on his list,
(*The Queen ex rel. Johnston* v. *Murney*,
voter has parted with the property in
ough on the list, he has no legal right
*Lutz* v. *Hopkins*, 7 U. C. L. J. 152.) If
covering an error in the entry of a vote,
ecessary correction, he must make it
where the mistake in making the entry
rson otherwise qualified to vote is not
of the change of residen
Township. (*Ib.*) As t
r, see note *f* to sec. 96.

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Officer, and such Returning Officer shall have all the powers, and shall forthwith proceed to hold the election, and perform all the other duties of a Returning Officer. (*f*) 29-30 V. c. 51, s. 97.

Returning officers to be conservators of the peace; their powers

**97.** The Returning Officer shall, during the days of the election, or of voting of electors as to a By-law, act as a Conservator of the Peace for the City or County in which the election or voting is held; and he, or any Justice of the Peace having jurisdiction in the Municipality in which the election or voting is held, may cause to be arrested, and may summarily try and punish by fine and imprisonment, or both, or may imprison or bind over to keep the peace, or for trial, any riotous or disorderly person, who assaults, beats, molests, or threatens any voter coming to, remaining at, or going from the election or voting; and, when thereto required, all constables and persons present at the election or voting, shall assist the Returning Officer or Justice of the Peace. (*g*) *Vide* 29-30 V. c. 51, s. 98.

Special constables may be sworn in.

**98.** Every Returning Officer or Justice of the Peace may appoint and swear in any number of Special Constables to assist in the preservation of the peace and of order at the election or voting of electors as to a By-law; and any person

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(*f*) The cases in which the electors may, under this section, appoint a Returning Officer, are:

1. Where the Returning Officer has died.
2. Does not attend within an hour after the time appointed.
3. Or where no Returning Officer has been appointed.

A Returning Officer, so appointed, should not be a partizan. It is the duty of a Returning Officer to stand indifferent between the contending parties; to have no interests to serve for either, or for himself; to approach his duty with the simple desire to do strict justice; to be ready and willing to give reasonable information as to the state of his proceedings; to conceal nothing; to evade no proper enquiry; to mislead no one by silence, or exhibit anything calculated to deceive; and he ought not to make a pretence of strictly following the letter of the law, to defeat it. (*Per* Wilson, J., in *The Queen ex rel. Corbett* v. *Jull*, 5 Prac. R. 48.)

(*g*) In general, the Returning Officer will act under this section upon his own view. But when, instead of acting on facts observed by himself or within his own knowledge, he acts on the information of others, it is suggested he should take a regular information, and proceed as any other Magistrate would be required to do under like circumstances. An example would be, when the complaint is an assault upon a voter coming to or returning from the election, committed at a distance from the poll. The main object of the section is however to empower the Returning Officer to act promptly on the spot in the hearing and determining of offences occurring at the poll; but in point of authority he is not so restricted.

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liable to serve as Constable, and required to be sworn in as a Special Constable by the Returning Officer or Justice, shall, if he refuse to be sworn in or to serve, be liable to a penalty of twenty dollars, to be recovered to the use of any one who will sue therefor. (*h*) 29-30 V. c. 51, s. 99.

DIVISION III.—OATHS.

*In case of Freeholders.* *Sec. 99.*
*In case of other Voters.* *Sec. 100.*
*Administering.* *Sec. 101.*

Oaths, &c., that may be put to person claiming to vote as a freeholder.

**99.** The only oaths or affirmations to be required of any person claiming to vote in respect of a freehold, shall be as follows, or to such effect:—That he is of the full age of twenty-one years, (*i*) and is a natural-born or naturalized subject of Her Majesty; (*k*) that he has not voted before at the election in the Township, Village or Ward (as the case may be) in which he is tendering his vote, and (if tendering his vote for Mayor, Reeve or Deputy Reeve) that he has not voted before or elsewhere in the Municipality for the election of Mayor, Reeve or Deputy Reeve (as the case may be); (*l*) that he has not directly or indirectly received any reward or gift, nor does he expect to receive any, for the vote which he tenders at the election; (*m*) that he is a freeholder in his own right (or right of his wife, as the case may require); (*n*) and in every case that he is the person named, or purporting to be named, in the list of the electors; (*o*)

(*h*) The penalty may, it is apprehended, though not so expressed, be sued for in any court of competent jurisdiction, for instance in a Division Court. (See *Brash q. t.* v. *Taggart*, 16 U. C. C. P. 415.)

(*i*) See note *g* to sec. 77.

(*k*) See note *f* to sec. 77.

(*l*) See note *a* to sec. 80.

(*m*) See note *l* to sec. 77.

(*n*) See note *m* to sec. 71.

(*o*) A Returning Officer who receives illegal votes, not on his list, may be made to pay costs. (*The Queen ex rel. Johnston* v. *Murney*, 5 U. C. L. J. 87.) Where a voter has parted with the property in respect to which he votes, though on the list, he has no legal right to vote. (*The Queen ex rel. Lutz* v. *Hopkins*, 7 U. C. L. J. 152.) If a Returning Officer, upon discovering an error in the entry of a vote, has the power to make the necessary correction, he must make it promptly, and only in a case where the mistake in making the entry is beyond doubt. (*Ib.*) A person otherwise qualified to vote is not disqualified by the simple fact of the change of residence from one Ward to another of the same Township. (*Ib.*) As to the general conduct of a Returning Officer, see note *f* to sec. 96.

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In new municipality where no assessment roll.

*(or in the case of a new Municipality, in which there has not been any Assessment Roll, then, instead of referring to the list of electors, the person offering to vote may be required to state in the oath the property in respect of which he claims to vote.)* (*p*) *Vide* 29-30 V. c. 51, s. 101, sub. 8.

Oaths, &c., that may be put to person claiming to vote otherwise than as a freeholder.

**100.** The oaths or affirmations to be required of any person claiming to vote, otherwise than in respect of a freehold, (*q*) shall be as follows, or to such effect:—That he is of the full age of twenty-one years, (*r*) and is a natural-born or naturalized subject of Her Majesty; (*s*) that he has not voted before at the election in the Township, Village or Ward (*as the case may be*) in which he is tendering his vote, and (*if tendering his vote for Mayor, Reeve or Deputy Reeve*) that he has not voted before or elsewhere in the Municipality for the election of Mayor, Reeve or Deputy Reeve (*as the case may be*); (*t*) that he has not directly or indirectly received any reward or gift, nor does he expect to receive any, for the vote which he tenders at the election; that he has been resident within the Municipality for which the election is held for one month next before the election; (*u*) and that he is (*or his wife is*) a householder or tenant within such Municipality, (*v*) and that he is the person named, or purporting to be named, in the list of the electors; and that at the time of the last final revision and correction of the Assessment Roll upon which the list is based, he was actually, truly and in good faith possessed to his own use and benefit as tenant or occupant of the real estate in respect of which his name is entered on the said list; (*w*) (*or in the case of a new Municipality, in which there has not been any Assessment Roll; then instead of swearing to residence for one month next before the election, and referring to the list of electors, the person offering to vote may be required to state in the oath the property in respect of which he claims to vote, and that he is a resident of such Municipality.*) (*x*) 37 V. c. 16, s. 2.

In new municipality where no assessment roll.

(*p*) See sec. 79.
(*q*) See sec. 77.
(*r*) See note *g* to sec. 77.
(*s*) See note *f* to sec. 77.
(*t*) See note *a* to sec. 80.
(*u*) See note *l* to sec. 77.
(*v*) See note *e* to sec. 77.
(*w*) See note *o* to sec. 99.
(*x*) See note *t* to sec. 79.

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**101.** Such oaths or affirmations shall be administered by the Returning Officer or Chairman, at the request of any candidate, or his authorized agent, and no enquiries shall be made of any voter, except with respect to the facts specified in such oaths or affirmations. (*a*) *Vide* 29-30 V. c. 51, s. 101, sub. 7 & 8.

When and how oaths are to be administered.

DIVISION IV.—PROCEEDINGS AT ELECTIONS.

*Nomination Meetings. Sec. 102–104.*
*Presiding Officer, who. Sec. 103–105.*
*Poll, when and where to take place. Sec. 106, 107.*
*Resignations—Notification as to Candidates. Sec. 108.*
*Voters' List. Sec. 109.*
*Poll Book. Sec. 110–112.*
*Declaration of Result. Sec. 113.*
*Casting Vote, when. Sec. 114.*
*Elections, Interruptions, &c., in. Sec. 115, 116.*
*Incomplete Returns. Sec. 117–119.*
*Warden of County, Election of. Sec. 120–122.*

**102.** A meeting of the electors shall take place for the nomination of candidates for the office of Mayor in Cities, and for Mayor, Reeve and Deputy Reeves in Towns, at the Hall of the Municipality, on the last Monday in the month of December, annually, at ten of the clock in the forenoon, and the Deputy Reeves shall be designated as first, second, third, &c., according to the number to be elected. (*b*) 29-30 V. c. 51, s. 107.

Annual meeting for nomination of mayor, reeve, deputy reeve, &c.

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(*a*) The Returning Officer should, on request of either of the candidates, or his agent (whether such agent be or be not a duly qualified elector), administer the necessary oaths or affirmations. (*Per* Hagarty, J., in *The Queen ex rel. Gardiner* v. *Perry*, 3 U. C. L. J. 90; see also *The Queen* v. *Spalding*, Car. & M. 568.) The refusal of an elector to take the oath is, if the relator would otherwise have had a majority, a good ground for setting aside the election. (*The Queen ex rel. Dillon* v. *McNeil*, 5 U. C. C. P. 137.) See as to prosecutions for false oaths, under enactments corresponding to the above, the following cases: *The Queen* v. *Dodsworth*, 2 Moo. & R. 72; s. c., 8 C. & P. 218, where form of indictment is given. See further, *The Queen* v. *Ellis*, Car. & M. 564; *The Queen* v. *Thompson*, 2 Moo. & R. 355 (as to the evidence).

(*b*) A nomination is a resolution submitted to the electors that the party named is a candidate for their suffrage for an office named. (*Per* Wilson, J., in *The Queen ex rel. Corbett* v. *Jull*, 5 Prac. R. 47.) See further, note *i* to sec. 106. A popular impression exists that the Returning Officer ought, when there are more than the necessary number of candidates, to take a show of hands, and that the omission to do so is an irregularity. The modern practice is no doubt to take

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The clerk to preside.

**103.** The Clerk of the Municipality shall preside at such meeting, or, in case of his absence, the Council shall appoint a person to preside in his place. If the Clerk or the person so appointed does not attend, the electors present shall choose a Chairman or person to officiate from among themselves, and such Clerk or Chairman shall have all the powers of a Returning Officer. (*c*) 29-30 V. c. 51, s. 108.

With powers of a returning officer.

Nomination meetings.

**104.** A meeting of the electors shall take place for the nomination (*d*) of candidates for the offices of Aldermen in Cities, Councillors in Towns, and of Reeves, Deputy Reeves and Councillors in Townships not divided into Wards and

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a show of hands. But formerly there were several modes of expressing the opinion of the electors, which constituted an election by the view, either holding up of the hands, calling out the names of the candidates, or by dividing into separate bodies. When, however, a poll was demanded, these forms were unnecessary. (Clark on Elections, 160.) If, through some blunder, the majority of the electors were to mistake the day of election, and abstain from voting, it might be held that an election by the minority would not be a valid election. (*The Queen* v. *Bradford*, 2 L. M. & P. 35.) In case, by reason of a riot or other emergency, the election is not commenced on the proper day, or is interrupted after being commenced, provision is made for an extension of the time for receiving votes. (Secs. 115, 116.)

(*c*) The Council should provide for the absence of the Clerk, if at all apprehended or expected. Should they fail to do so, the electors present may choose a Chairman. Should the electors do so, it is submitted the Chairman so chosen would have a right to conduct the nomination to its termination, notwithstanding the presence in the meantime of the Clerk, or a person appointed by the Council as his substitute. The proceedings at the meeting, if not presided over by the officer or person assigned, would in all probability be held absolutely void. "It cannot be a mere matter of procedure or form, that there should be no person presiding at the meeting in whom is vested the authority for conducting the election and for maintaining peace and order, to whom the Legislature has entrusted the counting of votes and certifying the result. In the absence of any such person, I do not see how a poll can be taken, or the result legally ascertained." (*Per* Draper, C. J., *In re Hartley and Emily*, 25 U. C. Q. B. 15.) "The Legislature says, and, I must take it, for very good reasons, that the election is to be conducted by a particular officer, and then another person goes and conducts it. Even if I had a discretion, I should not exercise it in supporting such a practice. It is very much the same as if a cause was referred to a barrister, and he were to go away for his own pleasure and leave it to his clerk, and then it was said that the award was good because it was made just as well as if it had been made by the barrister. Or if a cause was to be heard by a judge, and he left it to one of the masters; he might conduct it just as well as the judge, but that would not do." (*Per* Crompton, J., in *The Queen* v. *Backhouse et al*, 12 L. T. N. S. 579; see further, *Pickering* v. *James*, L. R. 8 C. P. 489.) As to the general conduct of a Returning Officer, see note *f* to sec. 96.

(*d*) *Nomination.* See note *b* to sec. 102.

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Incorporated Villages, at noon on the last Monday in December annually, (*e*) at such place therein, and in Cities and Towns at such places in each Ward thereof as shall from time to time be fixed by By-law; and the Deputy Reeves shall be designated as first, second, third or fourth, according to the number to be elected; Provided that in Townships divided into Wards, the nomination of candidates for the office of Reeve shall be held at ten of the clock in the forenoon, at such place in such Township as shall from time to time be fixed by By-law. And the Clerk shall preside at the meeting for the nomination of candidates for the office of Reeve; and that the nomination of candidates for the office of Councillor to be elected in each Ward shall take place at noon, at such place in the Township, or in each Ward, as shall be fixed by By-law. (*f*) 37 V. c. 16, s. 3.

Presiding officer.

**105.** In Cities and Towns, and Townships divided into Wards, the Councils thereof respectively shall, by their said By-law, name the Returning Officer for each Ward, who, and in other Municipalities the Clerk, shall respectively preside at the meeting for the nomination of candidates, of which the Clerk or other Returning Officer shall give at least six days' notice; (*g*) and in case of the absence of such presiding officer, the meeting may choose their Chairman. (*h*) *Vide* 29-30 V. c. 51, s. 100, sub. 1; 31 V. c. 30, s. 17.

Nomination and proceedings incident thereto.

**106.** At the said meetings, the person or persons to fill each office shall be proposed and seconded *seriatim;* (*i*) and if no other candidate but one for any particular office is pro-

(*e*) See note *j* to sec. 85.

(*f*) *By-law.* See note *d* to sec. 94.

(*g*) *At least six days' notice.* This means six full days. (*In re Sams* v. *Toronto*, 9 U. C. Q. B. 181.) Where a statute says a thing shall be done so many days, or so many days at least, before a given event, the day of the thing done and that of the event must both be excluded. (*The Queen* v. *Shropshire*, 8 A. & E. 173; *Mitchell* v. *Foster*, 9 Dowl. 527.) A notice of "ten days at least" for a hearing, means that there shall elapse at least ten periods of twenty-four hours each between the day of its delivery and the day of hearing. (*Per* Maule, J., in *Norton* v. *Salisbury*, 4 C. B. 37.) It means ten clear, full and complete days, and not nine days and fractions of other two days. (*Per* Wilde, C. J., in *Adey* v. *Hill*, *Ib.* 40.)

(*h*) See note *f* to sec. 96.

(*i*) It would seem that where more persons are proposed and seconded than necessary, and, after polling commenced, all except the necessary number retire, the Returning Officer could not close the poll unless under the circumstances mentioned in this section. (See *The Queen ex rel. Horne* v. *Clark*, 6 U. C. L. J. 114.) The election is commenced when the Returning Officer receives the nomination of

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posed, the Clerk or other Chairman shall, after the lapse of one hour from the time fixed for holding the meeting, declare such candidate duly elected for such office. (*k*) But if two or more candidates be proposed for any particular office, and if a poll is required by them respectively, or by any elector, the Returning Officer or Chairman shall adjourn the proceedings for filling such office until the first Monday in January next thereafter, when a poll or polls shall be opened in each Ward or other Electoral Division, at such place or places as shall be fixed by the By-law of the said Councils respectively, for the election at nine of the clock in the morning, and shall continue open until five of the clock in the afternoon, and no longer. (*l*) *Vide* 29-30 V. c. 51, s. 100, sub. 2 & 3; s. 101, sub. 3; ss. 110 & 111; 31 V. c. 30, ss. 13, 18 & 21.

Places for holding elections.

**107.** The Council shall, by By-law, fix the places for holding the election, and also name the Returning Officers who shall respectively hold the nomination for each Ward, and those who shall preside at the respective polling places. (*m*) 37 V. c. 16, s. 4.

Any person proposed may resign, &c.; in default, to be taken as nominated.

**108.** At the nomination meeting, any person proposed for one or more offices may resign, or elect for which office he is to remain nominated; and in default he is to be taken as nominated for the office in respect of which he was firstly proposed and seconded; (*n*) the Clerk or other Chairman of

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candidates. (*The Queen* v. *Cowan*, 24 U. C. Q. B. 606. See note *b* to sec. 102.)

(*k*) By allowing an hour to elapse between the nomination and the proceeding to close the election in case of no further nominations, the Legislature means to protect the electors against haste and surprise. (*Per* Wilson, J., in *The Queen ex rel. Corbett* v. *Jull*, 5 Prac. R. 48.) Unless an opportunity be given to the electors present to express their assent or dissent, there cannot be said to be an election by acclamation. (*Ib.*)

(*l*) It is necessary that during the hours for polling the electors should have free access to the polling places. The fact that a large number of duly qualified electors could not cast their votes, is a sufficient reason for setting aside an election, if the result would have been affected by the unpolled votes. (*Per* Richards C. J., in *The Queen ex rel. Davis et al* v. *Wilson et al*, 3 U. C. L. J. 165.) If prevented by riot or other emergency, provision is made for an extension of time. (See secs. 115, 116.)

(*m*) As to the general conduct of Returning Officers, see note *f* to sec. 96.

(*n*) It may be that the same person is qualified to fill incompatible offices, such as Reeve, Deputy Reeve, and Councillor, and has been nominated for more than one of these offices. A person so nominated must elect for which office he is to remain nominated. If he fail to do so, he is to be considered as nominated only for the office for

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the meeting shall, on the day following that of the nomination, post up in the office of the Clerk of the Municipality the names of the persons proposed for the respective offices, and the Clerk shall provide each Returning Officer with a certified list of the names of such candidates, specifying the offices for which they are respectively candidates. (*o*) *Vide* 29-30 V. c. 51, s. 100, sub. 4; sec. 111; 31 V. c. 30, s. 21. Notices of persons proposed.

**109.** The Clerk of the Municipality shall, before the poll is opened, deliver to the Returning Officer for every or any Ward or Electoral Division, a list of the names, arranged alphabetically, of all male freeholders and householders rated upon the then last revised Assessment Roll for real property lying in that Ward or Electoral Division to the amount required to qualify them to vote at such election, and shall attest the said list by his solemn declaration in writing under his hand; (*p*) and in Cities, Towns, Incorporated List of voters.

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which he was first proposed and seconded. This provision is absolutely necessary to avoid confusion and entanglement. A candidate proposed for only one office may also resign, with the consent of his proposer and seconder and of the electors present. (*The Queen ex rel. Coyne* v. *Chisholm*, 5 Prac. R. 328.)

(*o*) Duties are cast as well on the Chairman of the meeting as on the Clerk of the Municipality, the performance of which is necessary to the proper conduct of the election. It is essential that each Returning Officer should have a list of the candidates; but an omission in regard to some of the names of the candidates does not necessarily invalidate the election. (*The Queen ex rel. Walker* v. *Mitchell*, 4 Prac. R. 218.) A voter who permitted one candidate to retire without expressing objection of any kind, and after his retirement nominates another candidate for the office, will not be allowed afterwards to insist upon having the name of his first nominee entered on the poll books. (*The Queen ex rel. Coyne* v. *Chisholm*, 5 Prac. R. 328.)

(*p*) The law requires the Returning Officer to be furnished with a list of the names, arranged alphabetically, of all male freeholders and householders rated upon the Roll, &c., and it is obvious for what purpose. The purpose is, not to enable the Returning Officer himself to judge of the sufficiency or insufficiency of votes taken, but that all persons interested in the election may have a check at hand at the time of polling the votes. (*The Queen ex rel. Dundas* v. *Niles*, 1 Cham. R. 198; see also secs. 75, 76, 77.) Persons whose names are on the original Roll, though omitted by accident from the list, may, it seems, claim a right to vote; but not persons whose names are on the list, though not on the original Roll. (*The Queen ex rel. Helliwell* v. *Stephenson*, 1 Cham. R. 270.) The list furnished to the Returning Officer ought to be alphabetical, and if not so the Returning Officer should himself make it alphabetical. (*The Queen ex rel. Davis et al* v. *Wilson et al*, Chambers, Richards, J., 3 U. C. L. J. 166.) Where the Returning Officer was not furnished with the list, and notwithstanding proceeded with the election, held, that it was an irregularity which

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Persons in arrear for taxes may be excluded from list.

Villages and Townships, which have passed By-laws requiring this to be done, shall exclude from such list such persons as shall have been returned to him by the Treasurer as in default for not having paid their Municipal taxes respectively on or before the fourteenth day of December preceding the election. (*q*) 29-30 V. c. 51, s. 100, sub. 5; s. 101, sub. 5.

Poll-books.

**110.** The Clerk of every Municipality shall provide the Returning Officer of every Ward or Electoral Division with a poll-book, and such Returning Officer shall enter in such book, in separate columns, the names of the candidates proposed and seconded at the nomination, and the Returning Officer, or his sworn Poll Clerk, shall, opposite to such columns, write the names of the electors offering to vote at the election, and shall, in each column in which is entered the name of a candidate voted for by a voter, set the figure "1" opposite the voter's name. (*r*) 29-30 V. c. 51, s. 100, sub. 6; s. 113; *vide* 31 V. c. 30, s. 19.

How kept.

Municipalities not divided into wards or electoral divisions.

**111.** In case of Municipalities which are not divided into Wards or Electoral Divisions, the Clerk shall be Returning Officer, and shall provide himself with a similar list of the names of electors for the Municipality, and a poll-book, and

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subjected the election to be avoided if the objection were taken by one qualified to urge it, although it might not *ipso facto* render the election void. (*In re Charles* v. *Lewis et al*, 2 Cham. R. 170.) The acquiescence of the candidates in the election being proceeded with under these circumstances, though it might preclude *them* from disputing the validity of the election on that ground, could not affect the right of a voter who was no party to such arrangement. (*Ib*). In such a case, however, it would seem to be necessary to show that the absence or inaccuracy of the list prejudiced the election, or that some candidate or voter refused on that ground to proceed, and relied upon the objection. (*The Queen ex rel. Ritson* v. *Perry et al*, 1 Prac. R. 237; *The Queen ex rel. Walker* v. *Mitchell*, 4 Prac. R. 218.) Where the Returning Officer used the original Roll instead of the list, having first announced that he concluded to do so, and no one objected, the election was supported. (*The Queen ex rel. Hall* v. *Grey et al*, 15 U. C. Q. B. 257.) It would also seem that it is no objection to the list that it was not verified as the statute requires, unless some objection be taken before or during the election. (*The Queen ex rel. Ritson* v. *Perry et al*, 1 Prac. R. 237.)

(*q*) See note *o* to sec. 77.

(*r*) The entries in the poll-book are to be as follows:

1. The names of the candidates proposed and seconded at the nomination.

2. The names of the electors offering to vote at the election.

3. And in each column in which is entered the name of a candidate, the figure "1" opposite the voter's name.

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shall perform the like duties with respect of the whole Municipality as are imposed upon other Returning Officers in respect of a Ward or Electoral Division. (*s*) *New.*

**112.** The Returning Officer shall, on the day after the close of the election, return the poll-book to the Clerk of the Municipality, with his solemn declaration thereto annexed, that the poll-book has been correctly kept, and contains a true record of the votes given at the polling-place for which he was Returning Officer. (*t*) 29-30 V. c. 51, s. 100, sub. 7, ss. 102, 114. Poll-books to be returned to the clerk.

**113.** The Clerk of the Municipality shall add up the number of votes for each candidate for any office; and in case a poll has been taken and the poll-books returned for every Ward or Electoral Division, the votes in which should be counted in order to determine the election, shall, at the town hall, or, if there be no town hall, at some other public place, at noon on the day following the return of such poll-books, publicly declare so elected the candidate or candidates having the highest number of votes; and shall also put up in some conspicuous place a statement under his hand showing the number of votes for each candidate. (*u*) *Vide* 29-30 V. c. 51, s. 101, sub. 9. sec. 115; 31 V. c. 30, s. 15. Clerk to declare result of the election.

**114.** In case two or more candidates have an equal number of votes, the Clerk of the Municipality or other person appointed by By-law to discharge his duties of Clerk in his absence or incapacity through illness, and, whether otherwise qualified or not, shall, at the time he declares the result of the poll, give a vote for one or more of such candidates, so as to decide the election; and except in such case, In certain cases to have casting vote.

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(*s*) See secs. 109 and 110 and notes thereto.

(*t*) The poll-book must not only be returned to the Clerk of the Municipality on the day after the close of the poll, but be returned verified. It is not, it will be observed, made the duty of the Returning Officer to add up the votes for each of the candidates. That, by the next section, is made the duty of the Clerk.

(*u*) It would seem that under this Act the duties of the Clerk are simply ministerial. This being so, it is none of his business whether the candidate elected is qualified or not. His duty is publicly to declare elected the candidate or candidates having the highest number of votes. (*Per* Patteson, J., in *The Queen* v. *Ledyard*, 8 A. & E. 545.) There is, apparently, no power to correct the state of the poll or to put up a statement after the day limited for the purpose. In this view an amended statement or a statement put up after the day limited might be deemed a nullity. (See *The Queen* v. *Leeds*, 11 A. & E. 512.)

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no Returning Officer or Clerk of the Municipality shall vote at any election held by him. (*v*) *Vide* 29-30 V. c. 51, s. 100, sub. 9; s. 101, sub. 10, s. 116.

Election not commenced or interrupted by riot, etc., to be resumed.

**115.** In case, by reason of riot or other emergency, an election is not commenced on the proper day, or is interrupted after being commenced and before the lawful closing thereof, the Returning Officer shall hold or resume the election on the following day at the hour of ten o'clock in the forenoon, and continue the same from day to day, if necessary, for four days until the poll has been opened without interruption, and with free access to voters, for twelve hours in all, or thereabouts, in order that all the electors so intending may have had a fair opportunity to vote. (*a*) 29-30 V. c. 51, s. 103.

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(*v*) It would be well for the Clerk, or other person acting as Returning Officer, to pay close attention to this section. Whether qualified as an elector or not, he is not, except as mentioned, allowed to vote. The exception is, when two or more of the candidates have an equal number of votes. Then, whether otherwise qualified or not, he "*shall* give a vote for one or more (that is, when more than one is to be elected) of such candidates, so as to *decide* the election."

The Court will presume that a public officer acts properly and honestly till the contrary is shown; and where it is intended to charge any officer with unfairness or partiality, the case should be plainly stated and clearly made out. (*The Queen ex rel. Walker* v. *Hall*, 6 U. C. L. J. 138.) Where a Returning Officer, after closing the poll, received an affidavit from M. that his vote had been entered by mistake for relator, on which he altered his vote in the poll-book, and, the votes then being equal, gave his casting vote, the election was set aside. (*The Queen ex rel. Acheson* v. *Donoghue et al*, 15 U.C. Q. B. 454.) In a similar case the Returning Officer was ordered to pay the relator's costs. (*The Queen ex rel. Mitchell* v. *Rankin et al*, 2 Cham. R. 161.) If the Returning Officer act in good faith, though illegally, it is not usual to inflict costs on him. (*The Queen ex rel. Coupland* v. *Webster*, 6 U. C. L. J. 89.) It has been held that a Returning Officer cannot, after the close of the poll, add his vote for a candidate, although he then for the first time discovers a tie between them. (*The Queen ex rel. Bulger* v. *Smith et al*, 4 U. C. L. J. 18.)

(*a*) It is necessary that during the hours of polling the electors shall have free access to the polling place. (*The Queen ex rel. Davis et al*, v. *Wilson et al*, 3 U. C. L. J. 165.) In case, by reason of riot or other emergency, an election is not commenced on the proper day, or is interrupted after commencement, the election must be resumed the next day, and, *if necessary*, continued from day to day for four days, till the poll has been open without interruption and with free access to voters for the time mentioned, viz., twelve hours in all, or thereabouts. The object, of course, is, that all the electors intending to vote may, notwithstanding riot or other emergency, have a fair opportunity to vote. If it were shown that, notwithstanding the

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**116.** But in case the election has not, by the end of the fourth day from the day the same commenced, or should have commenced, been so kept open for the said twelve hours, the Returning Officer shall not return any person as elected, but shall return his poll-book on the following day to the Head of the Municipality, certifying the cause of there not having been an election, and a new election shall take place; (*b*) and the Head of the Municipality shall forthwith issue his warrant therefor. (*c*) 29-30 V. c. 51, s. 104.

If election is prevented for four days poll-book to be returned, and a new election ordered.

**117.** If no return has been made for one or more Wards or Electoral Divisions, in consequence of no election having been held therein, or of the election having been interrupted through riot or other cause, the Clerk shall declare the want of return for such Ward or Wards, or Electoral Divisions, and the cause thereof. (*d*) 29-30 V. c. 51, s. 119.

If no return for one or more wards, clerk to declare fact.

**118.** When a poll has been duly held in each of such Wards, or Electoral Divisions, and the poll-books returned

When poll completed clerk to add up votes and declare result; when and where.

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expiration of the four days allowed, there was not a fair opportunity of voting, in consequence of which votes were lost, it is apprehended a new election would be ordered. (See 116.)

(*b*) "If rioting takes place to such an extent that ordinary men, having the ordinary nerve and courage of men, are thereby prevented from recording their votes, the election is void by the common law, for the common law provides that an election should be free in the sense that all persons shall have an opportunity of coming to the poll and voting without fear or molestation." (*Nottingham Case*, 1 O'M. & H. 245; see also *The Stafford Case*, *Ib.* 234, and *The Drogheda Case*, *Ib.* 252.

(*c*) The new election is to take place in case the election has not, within four days, been kept open twelve hours, and the Returning Officer has not returned any person as elected, but has certified the cause of the failure. If the Returning Officer should so far forget his duty as to return any of the candidates elected, the election would no doubt be set aside. (*The Queen ex rel. Davis et al* v. *Wilson et al*, 3 U. C. L. J. 165.) Where it was sworn that intending voters for an unsuccessful candidate were obstructed in approaching the polling place by a crowd controlled by one of the successful candidates, and neither the fact of the obstruction nor the control was unequivocally denied by that candidate, the election was set aside. (*The Queen ex rel. Gibbs et al* v. *Branighan et al*, 3 U. C. L. J. 127.) The tendency of modern decisions is not to compel a party to pay costs, unless it be shown that he really participated in the improper conduct for which the election is set aside. (*The Queen ex rel. Davis et al* v. *Wilson et al*, 3 U. C. L. J. 165.)

(*d*) The declaration of the Clerk as to the want of a return is to be followed by the action of the Council, as directed in section 125 of this Act.

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to the Clerk, the Clerk shall add up the number of votes therein set down for each candidate for any office in respect whereof the election has not been previously declared, together with the votes contained for such candidate in the poll-books previously returned for the other Wards, and shall at noon on the next day, at the town hall, declare elected the candidate or candidates having the largest number of votes polled. (*e*) *Vide* 29-30 V. c. 51, s. 121.

Declaration and assumption of office.

**119.** The person or persons so elected shall make the necessary declarations of office and qualification and assume office accordingly. (*f*) 29-30 V. c. 51, s. 122.

Election by county council of a warden.

**120.** The members elect of every County Council, being at least a majority of the whole number of the Council when full, (*g*) shall, at their first meeting after the yearly elections, and after making the declaration of office and qualification

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(*e*) The candidate to be declared elected is the one having "the greatest number of votes polled," *i. e.*, not a majority of the whole number of votes polled, but the greatest number of votes polled for any one candidate compared with the number of votes polled for other candidates. (See note to sub. 6, of sec. 231.)

(*f*) Acceptance of office, when the person elected is duly qualified, is obligatory. (See sec. 218 and notes thereto.)

(*g*) Thus, assuming the whole number of members of the Council to be twelve, there must be seven present to constitute a quorum. (*The Queen ex rel. Evans* v. *Starrall*, 7 U. C. C. P. 487.) So that an election by six in such a case, though unanimous, would be void. Acts done with less than a legal quorum are generally void. (*The King* v. *Bellringer*, 4 T. R. 810; *The King* v. *Miller*, 6 T. R. 268; *The Queen ex rel. Evans* v. *Starratt*, 7 U. C. C. P. 487; see also *Price* v. *Railroad Co.*, 13 Ind. 58; *Ferguson* v. *Crittenden*, 1 Eng. (Ark.) 479; *Logansport* v. *Legg*, 20 Ind. 315; *McCracken* v. *San Francisco*, 16 Cal. 591; *Piemental* v. *San Francisco*, 21 Cal. 351.) But in one case the Court, in the exercise of its discretion, refused to quash a By-law upon proof that a quorum was not present at the time of its passing. (*Sutherland* v. *East Nissouri*, 10 U. C. Q. B. 626.) The Court will presume, till the contrary be clearly shown, that there was a quorum present at the doing of a corporate act. (*Citizens' Mutual Fire Insurance Co.* v. *Sortwell et al*, 8 Allen, 217; see also *Southworth* v. *Palmyra and Jackson Railroad Co. et al*, 2 Mich. 287.) *Quære*, suppose seven present, in the case put of twelve members, would the vote of four be a valid election under this section? This depends on the question whether a majority of the quorum is all that is necessary. It cannot be said that those who vote against a man elect him to office. If three vote against him and four for him, and the latter be sufficient, he would be elected by four when seven are present, when an election by six, when six only are present, would not be sufficient. The question is whether, to entitle a man to the position of Warden, he should not have the voices of, in other words, be elected by, a majority of the Council when full. So far as

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when required to be taken, (*h*) organize themselves as a Council by electing one of themselves to be Warden. (*i*) 29-30 V. c. 51, s. 135.

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the Editor is aware the point has not yet been decided. But reading this section in connection with sec. 122, it would seem that a majority of the quorum is all that is necessary. (See *Southworth* v. *Palmyra and Jackson Railroad Co. et al*, 2 Mich. 287; see also *Ex parte Willcocks et al*, 7 Cow. 402; *Buell* v. *Buckingham*, 16 Iowa, 284; *Regents, &c.* v. *Williams*, 9 Gill & Johns. (Md.) 365; *Mills* v. *Gleason*, 11 Wis. 470.) A majority of those present, when legally assembled, binds the rest. (*The King* v. *Monday*, Cowp. 530, 538; *The King* v. *Devonshire*, 1 B. & C. 609; *The King* v. *Bower*, *Ib.* 492; *The King* v. *May*, 4 B. & Ad. 843; *The King* v. *Greet*, 8 B. & C. 363; *The King* v. *Headley*, 7 B. & C. 496; see also *The Queen ex rel. Hyde* v. *Barnhart*, 7 U. C. L. J. 126; *The Queen ex rel. Heenan* v. *Murray*, 1 U. C. L. J. N. S. 104.) There is no express provision as to the time a Warden shall hold office. (See note *d* to sec. 130.) The latter section makes provision for his resignation.

(*h*) No Reeve or Deputy Reeve is allowed "to take his seat" until he has filed with the Clerk of the County Council a certificate of the Clerk of the Local Council, under the Corporate seal, that such Reeve or Deputy Reeve was duly elected, and made and subscribed the declarations of office and qualification as such Reeve or Deputy Reeve (sec. 63). In the case of a Deputy Reeve, a declaration as to the number of persons on the Roll is also required. (*Ib.*) The filing of these papers and the making of the declarations of office and qualifications, when required, are conditions precedent to the election. (*In re Hawk and Ballard*, 3 U. C. C. P. 241; see also *The Queen ex rel. McManus* v. *Ferguson*, 2 U. C L. J. N. S. 23.) When the Reeve or Deputy Reeve has taken his seat, he cannot prevent the carriage of a vote by merely retiring from the Council after a motion has been made. (*The Queen ex rel. Heenan* v. *Murray*, 1 U. C. L. J. N. S. 104. But see *The People* v. *Whiteside*, 23 Wend. 9; s. c. 26 Wend. 634.) When four members of a Village Council, being at least a majority of the whole number of the Council when full, met, and at their first meeting a resolution, naming one of them as Reeve, was put and seconded and no dissent expressed, whereupon the Clerk, in the hearing of all, but while two of the members were returning from the Council Chamber, declared the resolution carried, the Reeve was held to be duly elected. (*The Queen ex rel. Heenan* v. *Murray*, 1 U. C. L. J. N. S. 104.) It is said that if a majority of the members present dissent from an election, but do not vote for any other than the person proposed, the election will be valid. (See *Cotton* v. *Davies*, 1 Str. 52; *Oldknow* v. *Wainwright*, 2 Burr. 1017; s. c. 1 Bl. 229.) They are taken to assent by not properly dissenting. If a majority of the whole Council, when full, be present and vote, it is of no consequence whether the minority were notified or not, (*The Queen ex rel. Hyde* v. *Burnhart*, 7 U. C. L. J. 126), even though the election take place at a meeting subsequent to the day fixed by the statute for the holding of the election. (*Ib.*)

(*i*) What is meant by organizing themselves as a Council by electing one of themselves to be Warden? The Council is a body; the Warden is the head thereof. To organize, in such a case, must



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Who to preside at election.

**121.** At every such election the Clerk of the Council shall preside, and if there is no Clerk, the members present shall select one of themselves to preside, and the person selected may vote as a member. (*i*) 29-30 V. c. 51, s. 136.

Who to have the casting vote in the event of equality of votes.

**122.** In case of an equality of votes on the election of the head of any County Council or Provisional County Council, then of those present, the Reeve, or in his absence the Deputy Reeve, of the Municipality which has the largest number of names on its last revised Assessment Roll as ratepayers, shall have a second and casting vote. (*k*) 29-30 V. c. 51, s. 137.

DIVISION V.—VACANCIES IN COUNCIL.

*How caused. Sec. 123, 124.*
*How filled. Sec. 125, 127, 128.*
*Seat held for residue of term. Sec. 126.*
*Not to prevent Organization of Council. Sec. 127.*

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mean so to bring the parts together as to constitute a body, and this organization is perfected when the head is constituted. But unless the parts come together there can be no such organization. If the members refuse to take their seats, or act as members of the Council, members refusing cannot be said to organize themselves. But members not desirous of being counted as of the quorum ought to absent themselves. So long as present, although for the purpose of protesting that they should not be counted, they may be counted as of the quorum. (See *The Queen ex rel. Rose* v. *Beach*, argued before Mr. Dalton, May 8, 1873, afterwards affirmed on appeal by Gwynne, J.; see further, note c to sec. 129.) It is believed that a member *de facto* elected Warden, is entitled to hold the office until removed by proper process of a proper Court. (See *The Wandsworth and Putney Gas Light and Coke Co.* v. *Wright et al*, 22 L. T. N. S. 404; see also *Citizens' Mutual Fire Ins. Co.* v. *Sortwell et al*, 8 Allen, (Mass.) 217.

(*i*) There must be a meeting, at which the Clerk is to preside. When the members have met for the purpose of electing a Warden, the Clerk of the Council is to preside at the meeting. If there be no Clerk, the members present are enabled to elect one of themselves to preside. He may, however, vote, but not have a casting vote, unless he happen to be the representative of the Municipality which has the largest number of names on its last revised Assessment Roll. (See sec. 122.) If an unauthorized person were to preside at the election, it would in all probability be held void. (See note c to sec. 103.)

(*k*) The general rule is to negative any question on which there is an equality of votes. (See sec. 182, at the end.) But an exception is by this section made in the election of the *head* of any Council. The exception is to be confined as indicated. (See *The Queen ex rel. Pollard* v. *Prosser*, 2 Prac. R. 330; *The Queen ex rel. Hume* v. *Lutz et al*, 7 U. C. L. J. 103.)

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*In certain cases Council to fill. Sec. 129.*
*Resignation of Warden and new Election. Sec. 130.*

Seats to become vacant by crime, insolvency, absence, &c.

**123.** If, after the election of any person as member of a Council, he be convicted of felony or infamous crime, or become insolvent within the meaning of the Insolvent Acts, or apply for relief as an insolvent debtor, or remain in close custody, or assign his property for the use of his creditors, or absent himself from the meetings of the Council for three months without being authorized by a resolution of the Council entered in its minutes, his seat in the Council shall thereby become vacant, (*l*) and the Council shall declare the seat vacant, and order a new election. (*m*) 31 V. c. 30, s. 22.

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(*l*) The contingencies which, under this section, will have the effect of vacating a seat in the Council are:

1. Being convicted of felony or infamous crime.
2. Becoming insolvent under the meaning of the Insolvent Acts.
3. Applying for relief as an insolvent debtor.
4. Remaining in close custody under process for debt.
5. Assigning property for the use of creditors.
6. Absence for three months from the Council without leave by resolution entered in the minutes of the Council.

To these may be added:

7. Being convicted of an offence under Statute 32 Vic. cap. 32 (the Shop and Tavern Licenses Act), sec. 17.
8. Resignation. (Sec. 124.)
9. Death. (Sec. 125.)
10. Judicial decision. (Sec. 125.)
11. Acceptance of an incompatible office. (See note *s* to sec. 124.)

The Act of 1866 made the "return of *nulla bona* against his goods" ground for vacating the seat; but this, no doubt, has been removed at the instance of some disinterested holder of or aspirant to office. So long as a property qualification is necessary to office, one would think that a return of *nulla bona* would be good evidence of the want of the qualification. But it is well known that some men, holding office requiring property qualification in legislative and other bodies, are devoid of property when sought by the sheriff. It is an anomaly which, by the omission of the provision of the Act of 1866 on the point, the Legislature appears desirous to perpetuate. As to the meaning of the words, "shall thereby become vacant," &c., see *The King* v. *Oxford*, 6 A. & E. 349; *The Queen* v. *Leeds*, 7 A. & E. 963.)

(*m*) There must be an actual vacancy before a new election can be ordered. An anticipated vacancy, or a resignation to take effect at a future time, is no ground for ordering a new election. (*Lindsay* v. *Luckett*, 20 Texas, 516; *Biddle* v. *Willard*, 10 Ind. 62; *People* v. *Wetherell*, 14 Mich. 48. See also *Colt et al* v. *Bishop of Coventry*, Hob. 150; *Owen* v. *Stainoe*, Skin. 45; Glover on Municipal Corporations, 216.) "An existing office without an incumbent is vacant, whether it be a new or an old one." (*Per* Stuart, J., in *Stocking* v. *State*, 7 Ind. 326; see also *Collins* v. *State*, 8 Ind. 344.) Where the office becomes vacant

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Any member may resign with consent of majority of council.

**124.** Any Mayor or other member of a Council may, with the consent of the majority of the members present, to be entered on the minutes of the Council, resign his seat in the Council. (*n*) 29-30 V. c. 51, s. 151.

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through any other contingency than death, and the person whose seat is vacant insisted on holding it, the proper remedy against him is *quo warranto* procedure and not a writ of mandamus on the Mayor to hold a new election. (*The Queen* v. *Cornwall*, 25 U. C. Q. B. 293.) But it would appear that in such a case the summary procedure given by this Act, in the nature of a *quo warranto*, cannot be adopted. (*The Queen ex rel. McGouverin* v. *Lawlor*, 5 Prac. R. 208.) The expensive and dilatory proceeding authorized by the statute of Anne would therefore have to be adopted. (See *The Queen ex rel. Hart* v. *Lindsay*, 18 U. C. Q. B. 51.)

(*n*) A resignation implies that the person resigning has been elected to the office which he resigns, and has accepted that office. (*The Queen* v. *Blizard*, L. R. 2 Q. B. 55; *Miller* v. *Supervisors*, 25 Cal. 93.) Where the person elected instead of accepting office refuses office, he may, under certain circumstances, disclaim even before proceedings are taken to unseat him. (Sec. 147.) The right of a member of a Municipal Corporation to resign in the absence of express provision authorizing it, has been doubted. (*The King* v. *Tidderley*, 1 Sid. 14, Com. Dig. title "Franchise," F 30; *The King* v. *Rippon*, 1 Ld. Rayd. 563; *The Queen* v. *Lane*, 2 Ld. Rayd. 1304; see also *State* v. *Ferguson*, 31 N.J. (2 Vroom.) 107; *Lewis* v. *Oliver*, 4 Abb. Pr. 121; *People* v. *Porter*, 6 Cal. 26; *Gates* v. *Delaware County*, 12 Iowa, 405; *United States* v. *Wright*, 1 McLean, 509.) In 2 Roll. Ab. 456, it is said that an Alderman, with the assent of the Corporation, may resign his office in the Corporation, and that the Corporation may accept the resignation as of right. Where the Act which sanctions a resignation prescribes the mode, that mode must be followed. (*The King* v. *Hughes*, 5 B. & C. 886; *The King* v. *Rippon*, 1 Ld. Rayd. 563: *The King* v. *Payne*, 2 Chitty, 367; *The Queen* v. *Morton*, 4 Q. B. 146.) Where no particular mode is specified, the resignation need not be in writing or other set form. (*The King* v. *Rippon*, 1 Ld. Rayd. 563; *The Queen* v. *Lane*, 2 Ld. Rayd. 1304; see *Jenning's Case*, 12 Mod. 402; *The Queen* v. *Gloucester*, Holt, 450; *Van Orsdall* v. *Hazard*, 3 Hill, (N. Y.) 243; *State* v. *Allen*, 21 Ind. 516; *People ex rel. Hanrahan* v. *Metropolitan Police Board*, 26 N.Y. 316.) A Warden may resign by "verbal intimation to the Council in session," or "by letter to the County Clerk" if not in session. (Sec. 130.) By this section the resignation can only be effective when "with the consent of the majority of the members present, to be entered on the minutes of the Council." Until such consent be given and recorded, the offer to resign may be recalled. (*The Queen* v. *Lane*, 2 Ld. Rayd. 1304; *The King* v. *Rippon*, 1 Ld. Rayd. 563; *Jenning's Case*, 12 Mod. 402; *Hazard's Case*, 2 Roll. 11; *The King* v. *Patteson*, 4 B. & Ad. 9; see also *Van Orsdall* v. *Hazard*, 3 Hill. N. Y. 243; *State* v. *Ancker*, 2 Rich. (S. C.) 245.) In general, the right to accept a resignation is incidental to the power of appointment. (*The King* v. *Tedderley*, 1 Sid. 14; *Jenning's Case*, 12 Mod. 402; *Taylor's Case*, Popham, 133; *Staniland* v. *Hopkins*, 9 M. & W. 178.) When two offices are incompatible, they cannot be held together; therefore, the acceptance of the one is an implied resignation of

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**125.** In case no return be made for one or more Wards or Electoral Divisions, in consequence of non-election, owing to interruption by riot or other cause, (*o*) or in case a person elected to a Council neglect or refuse to accept office, or to make the necessary declarations of office within the time required, (*p*) or in case a vacancy occur in the Council, caused by resignation, death, judicial decision or otherwise, (*q*) the head of the Council for the time being, or in case of his absence, or of his office being vacant, the Clerk, or in case of the like absence or vacancy in the office of the Clerk, one of the members of the Council, (*r*) shall forthwith, (*s*) by war-

New elections provided for and mode of conducting same.

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the other. (*The King* v. *Patteson*, 4 B. & Ad. 9; *sed qu. Regents of the University* v. *Williams*, 9 Gill and Johns. (Md.) 365), and it matters not whether the second office is superior or inferior to the office first held. (*Milward* v. *Thatcher*, 2 T. R. 87; see also *The King* v. *Trelawney*, 3 Burr. 1615; *Crane* v. *Holland*, Cro. Car. 138.) In such a case it is said that *quo warranto* is unnecessary. (*Verrior* v. *Sandwich*, 1 Sid. 305; *Gabriel* v. *Clerke*, Cro. Eliz. 76; *Milward* v. *Thatcher*, 2 T. R. 87.) Where the same authority confers both offices, there can be no difficulty on the point. (*Arkwright* v. *Cantrell*, 7 A. & E. 565; *The King* v. *Bond*, 6 D. & R. 333.) If the first office cannot be resigned without the consent of some particular body, such as the Council, under this section the acceptance of an incompatible office, in the gift of a different body, could not *per se* be held to vacate the first office. (*Ib.*) Offices are incompatible where, from considerations of public policy, the incumbent cannot be properly expected to discharge the duties of both. (*Staniland* v. *Hopkins*, 9 M. & W. 178; *The King* v. *Tizzard*, 9 B. & C. 418; *People ex rel. Whiting* v. *Carrique*, 2 Hill (N.Y.) 93; *Bryan* v. *Cattell*, 15 Iowa, 538.) The offices of Chamberlain and Treasurer, and member of the Council, are incompatible. (*The Queen* v. *Smith*, 4 U. C. Q. B. 322, and sec. 196.) If, by any disregard of the law, accidental or otherwise, a person has been placed in the office who cannot by law hold it, things must take their course—the illegality must be ascertained and pronounced upon in a proper proceeding, instituted to try the question. (*Ib.*) A Treasurer of a Municipality should not be permitted also to act as a Bank Agent. (*Ingersoll* v. *Chadwick*, 19 U. C. Q. B. 278.)

(*o*) See sec. 116.

(*p*) Mere hesitation to take the oath until legal advice can be procured, is not to be deemed a neglect or refusal within the meaning of this section. (*In re Asphodel and Sargant et al*, 17 U. C. Q. B. 593.)

(*q*) See secs. 123, 124.

(*r*) Some evidence must be adduced before the officer named, to satisfy him as to the vacancy in order to make it obligatory upon him to act under this section. It is impossible to lay down any rule as to what amount or kind of evidence or information should be laid before him. (*In re Asphodel* v. *Sargant et al*, 17 U. C. Q. B. 593.)

(*s*) Where a thing is directed to be done by a statute "forthwith," it means within a reasonable time. (*The Queen* v. *Worcester*, 7 Dowl.

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rant under the signature of such head, clerk or member, if procurable, require the Returning Officers appointed to hold the last election for the Municipality, Ward and Electoral Division respectively, or any other person duly appointed to that office, to hold a new election to fill the place of the person neglecting or refusing as aforesaid, or to fill the vacancy. (*t*) 29-30 V. c. 51, s. 125.

Term of office of person thereupon elected

**126.** The person thereupon elected shall hold his seat for the residue of the term for which his predecessor was elected, or for which the office is to be filled. (*u*) 29-30 V. c. 51, s. 126.

Warrant for new elections.

**127.** In case such non-election, neglect or refusal as aforesaid, (*v*) occurs previous to the organization of the Council for the year, (*w*) the warrant for the new election shall be issued by the head or a member of the Council for the previous year, or by the Clerk, in like manner as provided by the one hundred and twenty-fifth section, (*x*) but such neglect

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789.) The word "immediately" is more strictly construed. (*The King* v. *Huntingdonshire*, 5 D. & R. 588; *The Queen* v. *Aston*, 1 L. M. & P. 491.)

(*t*) The person to be appointed is the person who was appointed to hold the last past election, unless some other has been appointed by the Council to hold casual elections, or to hold the particular election. It does not appear to be left to the discretion of the head, Clerk or member who issues the warrant to nominate the Returning Officer.

(*u*) The word "seat" is several times used in this Act. It is a figurative expression to indicate office. When a person takes his seat, he is said to take the office. When he resigns his seat, he resigns the office. When the seat is vacant, the office is vacant. The person elected is, in the language of this section, to hold his seat for the residue of the term of his predecessor; in other words, to hold the office for the residue of such term. The word, in the sense here used, is borrowed from Parliamentary language. (See further, notes *h* and *i* to sec. 120.)

(*v*) See note *p* to sec. 125.

(*w*) See note *i* to sec. 120.

(*x*) Five Councillors were elected in January. At their first meeting, on 17th January, only one made the declaration of qualification; and a doubt having been raised as to the remaining four, in consequence of some employment held by them under the Corporation, they delayed in order to consult the County Judge. On the 19th January they met again and organized themselves, but on the same day the Reeve for the previous year issued his warrant to elect four other Councillors, who were returned; and on the 31st January these four, with the man who had first qualified, met and claimed to be the Council. *Held*, that the second election was invalid; for the parties first elected not having *refused* to qualify, but only delayed, and having done so within the twenty days allowed, there was no ground

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or refusal shall not interfere with the immediate organization of the new Council, provided a majority are present of the full number of the Council. (*y*) 29-30 V. c. 51, s. 127.

But non-election not to prevent organization of council.

**128.** The Returning Officer shall hold the new election at furthest within eight days after receiving the warrant, (*a*) and shall appoint a time and place for the nomination of candidates, and, in case a poll be demanded, shall, at least

Time for holding, and notice of new election.

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for a new election. (*In re Asphodel and Sargant et al*, 17 U. C. Q. B. 593.) A mandamus was therefore ordered to the Clerk to deliver up the papers to the Council first chosen. (*Ib.*)

(*y*) See note *g* to sec. 120.

(*a*) The Returning Officer is to hold the election at *furthest* "*within* eight days *after receiving the warrant.*" The general rule for the computation of time fixed by a statute is—unless there be something in the statute to the contrary—to hold the first day excluded and the latter day included. (*Ex parte Fullon et ux.*, 5 T. R. 283.) In this case the statute required an annuity deed to be enrolled "*within* twenty days of the execution," and it was read as excluding the day of execution. Lord Kenyon, in delivering judgment, said, "It would be straining the words to construe the twenty days *all* inclusively. Suppose the direction of the Act had been to enrol the memorial within *one* day after the granting of the annuity, could it be pretended that it meant the same as if it were said that it should be done on the *same* day on which the act was done? If not, neither can it be construed inclusively where a greater number of days is allowed." The same interpretation was put on the words "*within* twenty-one days after the execution," in the case of the registry of a warrant of attorney. (*Williams* v. *Burgess*, 9 Dowl., 544.) Lord Denman, in delivering judgment, said, "The question in this case has been decided in *ex parte Fullon*, which is an unquestionable authority." In *Scott* v. *Dickson*, 1 Prac. R. 366, where the words were "within sixteen days after the service hereof," as used in the Ejectment Act 14 & 15 Vic. cap. 114, Robinson, C. J., said, "I think the rule of computation given by Stat. 2, Geo. IV. cap. 1, s. 22, does not apply, as this is a term appointed by a statute, not by a rule of Court, and by a statute passed after that Act, and therefore we must compute according to the general rule where there is no express provision. This makes the first day inclusive and the last exclusive, or *vice versa.*" (*Scott* v. *Dickson*, 1 Prac. R. 366, was followed in *Vrooman* v. *Shuert*, 2 Prac. R. 122; *Buffalo and L. H. R. Co.* v. *Brooksbanks*, *Ib.* 126; *Cameron* v. *Cameron*, *Ib.* 259; *Callaghan* v. *Baines et al*, *Ib.* 144; *Clark* v. *Waddell*, *Ib.* 145; *Phillips* v. *Merritt*, *Ib.* 233; *Cuthbert* v. *Street*, 6 U. C. L. J. 20; *In re West Toronto Election*, 5 Prac. R. 394. The following cases, in which *both* days were held to be inclusive, were decided under the 2 Geo. IV. cap. 1, or some other statute or rule expressly making both days inclusive: *Moore* v. *The Grand Trunk Railway Co.*, 2 Prac. R. 227; *Ross et al* v. *Johnson et al*, *Ib.* 230; *Rulont* v. *Orr*, *Ib.* 231; *Williams* v. *Lee*, 2 U. C. C. P. 157; *Morell* v. *Wilmott*, 20 U. C. C. P. 378. See further note *a* to s. 181 of the Assessment Act. But the words "*from*" and "*until*" do not admit of so rigid and well understood a rule of

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four days before such polling, (*aa*) post up a public notice thereof under his hand in at least four of the most public places in the Municipality, Ward, or Electoral Division. 29-30 V. c. 51, s. 128.

Mode of appointing requisite number of members of council if election neglected, &c.

**129.** In case at any annual or other election, the electors from any cause not provided for by the one hundred and fifteenth or one hundred and sixteenth sections, neglect or decline to elect the members of Council for a Municipality on the day appointed, or to elect the requisite number of members, (*b*) the other members of the Council, if they

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construction. In *Pugh* v. *Duke of Leeds*, 2 Cowp. 714, 717, Lord Mansfield said, "In grammatical strictness and in the nicest propriety of speech that the English language admits of, the sense of the word 'from' must always *depend* upon the *context* and *subject matter* whether it shall be construed *inclusive* or *exclusive* of the *terminus a quo*, and whilst the gentlemen of the bar were arguing this case, a hundred instances and more occurred to me, both in verse and prose, where it is used both inclusively and exclusively. If the parties in the present case had added the word 'inclusive' or 'exclusive,' the matter would have been very clear. If they had said 'from the day of the date *inclusive*,' the term would have commenced immediately. If they had said 'from the day of the date *exclusive*,' it would have commenced the *next* day. But let us see whether the context and subject matter in this case do not show that the construction here should be *inclusive* as demonstrably as if the word 'inclusive' had been added," &c. In *Watson* v. *Pears*, 2 Camp. 294, Lord Ellenborough said, "It used to be held that 'from the date' includes the day, and from 'the day of the date' excludes it. But since the case of *Pugh* v. *The Duke of Leeds*, the formal distinctions have been done away, and the rule of good sense has been established that such words shall be construed according to the meaning of the parties who use them." In *Isaacs et al* v. *The Royal Insurance Company*, L. R. 5 Ex. 296, Kelly, C. B., said, "Upon looking at the authorities before *Pugh* v. *Duke of Leeds*, 2 Cowp. 714, it appears that questions without number arose as to whether upon a contract to do any act or enter into an engagement at or for a definite term, say six or twelve months from the day of the date of some act done, time was to be reckoned exclusive or inclusive of the last day of the time, but in that case it was observed that it was impossible to lay down any fixed rule, but that each case must depend on its own circumstances and subject matter. Sometimes the first day, and sometimes the last was included. No settled and invariable rule has been laid down for all cases." The word "until," which is also equivocal in its meaning, was in this case held to be inclusive of the last day.

(*aa*) "At *least* four days, &c.," see note *g* to s. 105.

(*b*) The power to proceed under this section may be exercised, first, in case the electors neglect or decline to elect the necessary members on the day appointed for the election, and, secondly, in case they neglect or decline to elect the requisite number of members.

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equal or exceed the half of the Council when complete, or if a half of such members are not elected, then the members for the preceding year, or the majority of such members elected or old Council respectively, shall appoint as many qualified persons as will constitute or complete the number of members requisite; (*c*) and the persons so appointed shall accept office and make the necessary declarations, under the same penalty, in case of refusal or neglect, as if elected. *Vide* 29-30 V. c. 51, s. 129. Penalty.

(*c*) There is a difference between an election and an appointment. (*The Queen ex rel. Beaty* v. *O'Donaghue et al*, 3 U. C. L. J. 75.) An *election*, whether by the electors at large or by the members of the Council, is by vote, and usually consists in the choice of the members of the Council by the electors of the Municipality, or of the head of the Council by the members of the Council elect; both of which proceedings are in general essential to the organization of the Council. (Sec. 120 and notes.) An *appointment* is, properly speaking, an act of the Council after it has been organized. Thus: the Clerk and other officers are appointed, not elected, by the Council. (See sec. 186.) The section under consideration speaks of appointments, not of elections. It therefore becomes material to consider precisely under what circumstances the power of appointment under the section can be exercised. If there be an *entire* failure to elect members on the day fixed for the purpose, the power to appoint would of course devolve on the Council of the preceding year, which, having been duly organized, continues in office until superseded by the organization of a new Council. But if the failure to elect be only *partial*, that is to say, if the failure be to elect the requisite number of members, then the other members of the Council, *provided they equal or exceed the half of the Council when complete*, appoint the requisite number of members. If *less* than half of the members of the new Council have been elected, then the members of the *preceding* year may make the requisite appointments. This is as the Editor now understands the section. Words have been placed in it to remove a difficulty which he pointed out in the former edition of the Manual, when annotating the section corresponding with the one now under consideration; but there is still some obscurity in the section as now framed. It declares "that if a half of such members are not elected, then the members for the preceding year, *or* the majority of such members elected, *or* old Council, respectively, shall appoint," &c. No doubt the members of the preceding year may, in the case supposed, make the appointments. But what is meant by the words "or the majority of such members elected, *or* old Council?" Is it meant that either a majority of the new Council when less than half, *or* the old Council, may make the appointments? It is apprehended not. So to construe the section would be to revive the difficulty which the section was intended to prevent. The majority meant is the majority equalling or exceeding half the Council when full. Such a majority, if existing, shall make the appointments. If there be no such majority, then the old Council shall appoint. If this were not so, it would be in the power of the members elect, being a minority of the Council when full, to appoint the majority of the Council. This consequence would not be reasonable, and in order to avoid it, the section should be interpreted as above suggested.

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Resignation of warden provided for.

Vacancies, how filled.

**130.** The Warden of a County may resign his office (*d*) by verbal intimation to the Council while in session; or by letter to the County Clerk if not in session, (*e*) in which cases, and in case of a vacancy by death or otherwise (*f*) the Clerk shall notify all the members of the Council, and shall, if required by a majority of the members of the County Council, call a special meeting to fill such vacancy. (*g*) 29-30 V. c. 52, s. 150.

DIVISION VI.—CONTROVERTED ELECTIONS.

*How validity or right of Election determined. Sec. 131–141.*
*Writ for Removal, &c. Sec. 142.*
*If entire Election invalid. Sec. 143.*
*Disclaimer. Sec. 144–149.*
*Costs. Sec. 149, 150.*
*Decision of Judge final. Sec. 151.*
*Judges may settle Forms and Practice. Sec. 152.*

Trial of contested elections or right to elect.

**131.** In case the right of any Municipality to a Reeve or Deputy Reeve or Reeves, or in case the validity of the election or appointment of Mayor, Warden or Reeve, or Deputy Reeve, Alderman, or of Councillor is contested, (*h*)

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(*d*) It is remarkable that in no part of the Act is there any provision as to the time the Warden shall hold office. Section 120 provides for his election. This section provides for his resignation. But there is no section declaring how long he shall hold office in the event of his not resigning. There should be a legislative provision either that he should hold office for a year from his appointment, or till the appointment of his successor. It is by sec. 120 provided that the Council shall, at their first meeting, organize themselves by electing a Warden, &c. The inference is that the appointment is an annual one. But whether the office is to be held till the appointment of a successor is left in doubt. See note *j* to sec. 85.

(*e*) See note *n* to sec. 124.

(*f*) See note *l* to sec. 123.

(*g*) In the first instance, the duty of the Clerk is simply to notify the members of the Council of the vacancy. He is only bound to call a special meeting to fill the vacancy "if required by a majority of the members of the County Council." This evidently intends a majority of the Council when full, as to which, see note *g* to sec. 120.

(*h*) Two matters are stated as subjects that may be contested:

1. The *right* of a Municipality to a Reeve or Deputy Reeve or Reeves, which must depend on the number of freeholders and householders on the last revised Assessment Roll. (Sec. 67.)

2 The *validity* of the election or appointment of Mayor, Warden or Reeve or Deputy Reeve, Alderman or Councillor.

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the same may be tried in term or vacation by a judge of either of the Superior Courts of Common Law, or the senior or officiating judge of the County Court of the County in which the election or appointment took place; (*i*) and when the right of a Municipality to a Reeve or Deputy Reeve or Reeves is the matter contested, any Municipal elector in the County may be the relator, and when the contest is respecting the validity of any such election as aforesaid, any candidate at the election, or any elector who gave or tendered his vote thereat, or if respecting the validity of any such appointment, any member of the Council or any elector of the Ward, or, if there be no Ward, of the Municipality, for which the appointment was made, may be the relator for the purpose. (*k*) 29-30 V. c. 51, ss. 130 and 132.

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Until the passing of the Con. Stat. U. C. cap. 54, there was no mode by which the right of a Municipality to a Reeve or Deputy Reeve could be contested otherwise than by an information in the nature of a *quo warranto*. (*The Queen ex rel. Hart* v. *Lindsay*, 18 U. C. Q. B. 51.) Not until the passing of that Act was there any power in a summary manner to determine the validity of an appointment. (*The Queen ex rel. Beaty* v. *O'Donaghue et al*, 3 U. C. L. J. 75.) It would seem that a summons, in the nature of a *quo warranto*, is not yet the appropriate remedy against a person who has forfeited his seat by an act subsequent to his election. (*The Queen ex rel. McGouverin* v. *Lawlor*, 5 Prac. R. 208.) Further amendment, therefore, of this section is still needed.

(*i*) Before the summary mode of trial of contested elections prescribed by the Municipal Act, the only remedy was the tedious and expensive one of information in the nature of a *quo warranto*, and in cases where the provisions of the Municipal Act is inapplicable, that remedy must still be adopted. (*The Queen ex rel. Coleman* v. *O'Hare*, 2 Prac. R. 18; *The Queen ex rel. Hart* v. *Lindsay*, 18 U. C. Q. B. 51.) Where an information in the nature of a *quo warranto* is asked for on behalf of an individual, it must, if allowed, be exhibited in the name of the Master of the Crown Office. (*Ib.*) The summary mode prescribed by the Municipal Act is, so far as applicable, intended as a substitute for the proceeding by *quo warranto* information. (*The Queen ex rel. White* v. *Roach*, 18 U. C. Q. B. 226.) The general practice is, as much as possible, to confine parties aggrieved to the relief to be obtained under the statute. (*In re Kelly* v. *Macarow*, 14 U. C. C. P. 457.)

(*k*) The relator is the person upon whose application the jurisdiction of the Judge is put in motion. It is to be observed that—

1. When the right of a Municipality to a Reeve or Deputy Reeve or Reeves is the matter of contest, *any* Municipal elector *in the County* may be the relator.

2. When the contest is respecting the validity of any such election as aforesaid, "*any candidate* at the election, or any elector who gave or tendered his vote at the election," may be a relator.

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3. When respecting the validity of any such appointment, "*any* member of the Council, or *any* elector of the Ward, or, if there be no Ward, of the Municipality for which the appointment was made," may be the relator.

The latter provision is new. It is not necessary to give any definition of an elector. Reference may be made to sec. 77 and following sections as to who are electors. But it is to be observed, that while *any* elector may be relator when the right of a Municipality to a Reeve or Deputy Reeve or Reeves is the matter of contest, it must be "an elector who gave or tendered his vote at the election," or "a candidate" in the case where the validity of an election is the matter of contest. It is not, in such a case as last mentioned, enough for the relator to show that he "protested and voted" against the person elected. (*The Queen ex rel. White* v. *Roach*, 18 U. C. Q. B. 226.) "Candidate" is a vague term. No certain idea is fixed by law to it. (*Per* Lord Mansfield, in *Combe* v. *Pitt*, 3 Burr. 1590; see further, *Morris* v. *Burdett*, 1 Camp. 218.) A candidate was defined by Lord Ellenborough as "a person offering himself to the suffrages of the electors," (*Morris* v. *Burdett*, 2 M. & S. 216,) and by Dampier, J., as "one who voluntarily proposes himself or adopts the proposal of others." (*Ib.*) See further, *Muntz* v. *Sturge*, 8 M. & W. 310.) It is not necessary to constitute a person a candidate for the purposes of this section that he should be actually nominated at the election. (*The Queen ex rel. Corbett* v. *Jull*, 5 Prac. R. 41.) But if, after having been nominated, he, with the consent of his proposer and seconder, withdraw, he ceases to be a candidate. (*The Queen ex rel. Coyne* v. *Chisholm*, 5 Prac. R. 328.) The interest of the relator is not established by the ordering of the writ. (*The Queen ex rel. Shaw* v. *Mackenzie*, 2 Cham. R. 36.) It is not necessary that a relator who was a candidate should show in his application to oust the successful candidate that he himself is qualified to accept office. (*The Queen ex rel. Mitchell* v. *Adams*, 1 Cham. R. 203.) An elector who himself has been instrumental in electing a candidate, will not be allowed afterwards to complain of the election of that candidate. (*The Queen ex rel. Loyall* v. *Ponton*, 2 Prac. R. 18; *The Queen ex rel. Rosebush* v. *Parker*, 2 U. C. C. P. 15; *In re Kelly* v. *Macarow*, 14 U. C. C. P. 457; *The Queen ex rel. Grayson* v. *Bell*, 1 U. C. L. J. N. S. 130.) Upon similar principles it has been held that a Councillor who is instrumental in the election of a particular person as Reeve or Deputy Reeve, cannot afterwards be allowed to move against the person so elected Reeve or Deputy Reeve. (*The Queen ex rel. Rosebush* v. *Parker*, 2 U. C. C. P. 15.) So where there is only one candidate or set of candidates proposed, and he or they are in good faith elected by acclamation, no contest will be allowed under this section. (*The Queen ex rel. Bugg et al* v. *Bell*, 4 Prac. R. 226.) "If the electors do not think it worth while to contest an election in the ordinary way, it may properly be considered that the Legislature did not mean to give them a right to contest it by an application of this kind." (*Per* Hagarty, C.J., *Ib.* 229.) It is not desirable that the Clerks of Municipal Corporations, having the custody of the papers of the Corporation, should be relators in *quo warranto* proceedings to unseat members of the Councils of which they are Clerks. (*The Queen ex rel. McMullen* v. *De Lisle*, 8 U. C. L. J. 291.) All the Judges, whether of Superior or County Court, named in this section, possess

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**132.** If within six weeks after the election, or one month after acceptance of office by the person elected, (*l*) the relator shows by affidavit (*m*) to any such Judge (*n*) reason- Time for limited, and security and proof required.

concurrent and co-ordinate jurisdiction. But where a Judge of the Superior Court was of opinion against a sitting member, he declined to withhold his judgment, upon the ground that there was a prior relation at the instance of a different relator against same defendant for same cause, pending before a County Court Judge, which relation it was sworn was collusive and intended to protect the defendant in the enjoyment of office contrary to law. (*The Queen ex rel. McLean* v. *Watson*, 1 U. C. L. J. N. S. 71.) A stranger to the proceedings may, if otherwise qualified, attack them on the ground that they have been initiated in collusion with the defendant. (*The Queen ex rel. Patterson* v. *Vance*, 5 Prac. R. 334.) But he will not be allowed to set up irregularities in the proceedings as such unless he show that the relator committed them purposely, as, for example, to secure the failure of his own proceedings. (*Ib.*) If a relator find his proceedings irregular, he may notify defendant not to appear and of his intention to proceed *de novo*, in which case he may successfully make a second application. (*The Queen ex rel. Metcalfe* v. *Smart*, 10 U. C. Q. B. 89.)

(*l*) The first point for consideration is the time within which the application is to be made, that is, "within six weeks after the election, or one calendar month after the acceptance of office by the person elected." In the computation of the six weeks, the day of the election is to be excluded. (See note *a* to sec. 128.) Six weeks at all events are allowed, to impeach the election, although the office may have been accepted more than a calendar month. If the application be not made within the six weeks, the test is then whether the office has been accepted more than one calendar month. (*The Queen ex rel. Rosebush* v. *Parker*, 2 U. C. C. P. 16.) The application must not only be made within the time limited, but be made as the practice directs. (*The Queen ex rel. Telfer* v. *Allan*, 1 Prac. R. 214.) Therefore, where there was no written motion paper, as required by Rule No. 1, and the statement was not signed, as required by Rule No. 2, the application failed (*Ib.*, see Appendix); and if the time limited be allowed to elapse without an application, the relator will not be allowed to file an information in the nature of a *quo warranto*. (*The Queen ex rel. White* v. *Roach*, 18 U. C. Q. B. 226.)

(*m*) There should be at least two affidavits: the one of the relator, to the effect that he believes the grounds mentioned in the statement to be well founded; the other an affidavit of the relator or other person, setting forth fully and in detail the facts and circumstances which support the application. (Rule No. 2.) But though the affidavit of the relator may be sufficient to obtain the writ, the relator is an incompetent witness to establish the case at the trial, and therefore other evidence is required. (*The Queen ex rel. Carroll* v. *Beckwith et al*, 1 Prac. R. 278.) It seems, though it has not been expressly decided, that the attorney of the relator may act as a commissioner for taking the affidavits. (*The Queen ex rel. Blaisdell* v. *Rochester*, 12 U. C. Q. B. 630.)

(*n*) *i.e.*, Either a Judge of the Superior Courts of common law, or the senior or officiating Judge of the County Court of the County in which the election or appointment took place. (Sec. 131.)

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able grounds for supposing that the election was not legal, or was not conducted according to law, or that the person declared elected thereat was not duly elected, (*o*) and if the relator enters into a recognizance before the Judge, or before

(*o*) The grounds of the application are here specified, viz., either that the election was not legal, *or* was not conducted according to law, *or* that the person declared elected was not duly elected. The granting or refusal of the writ is a matter of discretion. If "reasonable grounds" be shown, the writ no doubt will be ordered. But it is not for every mistake or irregularity that the writ will be ordered. If the mistake or irregularity in no manner contributed to an improper result, the Judge may very properly refuse the writ. (See *The Queen* v. *Ward*, L. R. 8 Q. B. 210.)

The following may be the form of the statement:

IN THE QUEEN'S BENCH (*or* COMMON PLEAS).

The statement and relation of ——, of ——, who, complaining that ——, of —— (*here inserting the names and additions of all, if more than one person*), hath (*or* have) not been duly elected, and hath (*or* have) unjustly usurped and still doth (*or* do) usurp the office of ——, in the Town of —— (*or* Township of ——, *as the case may be*), in the County (*or* United Counties) of ——, under the pretence of an election held on ——, at ——, in the said County (*or* United Counties). [And (*when it is claimed that the relator, or the relator and another, or others, ought to have been returned*), that (*here name the party or parties so entitled*) was (*or* were) duly elected thereto, and ought to have been returned at such election], and declaring that he the said relator hath an interest in the said election as a ——, states and shows the following causes why the election of the said —— to the said office should be declared invalid and void. [And (*when so claimed*) the said —— (*naming the party or parties*) be duly elected thereto].

*First*—That (*for example*) the said election was not conducted according to law in this, that, &c.

*Second*—That the said —— was not duly or legally elected or returned, in this, that, &c.

*Third*—That, &c.

Signed by the relator in person, or by C. D., his attorney.

NOTE.—Where the intention of the relator is to impeach the election as altogether void, in which event, as the office cannot be claimed for any other or others, the portion of the above and succeeding forms relating thereto should be omitted.

The relator is not allowed, at the hearing, to object to the election of the party or parties complained against, on any ground not specified in the statement on which the summons was moved. Rule 9, Appendix.) But it is, notwithstanding, in the discretion of the Judge, if he see fit, to entertain, upon his own view of the case, any substantial ground of objection to or in support of the validity of the election of either or any of the parties which may appear in the evidence before him. (*Ib.*) None of the proceedings are to be set aside or held void on account of any irregularity or defect which shall not, in the opinion of the Court or Judge, be deemed such as to interfere with the just trial and adjudication of the case on the merits. (Rule 18, *Ib.*)

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a Commissioner for taking affidavits, (*p*) in the sum of two hundred dollars, with two sureties (to be allowed as sufficient by the Judge upon affidavit of justification) in the sum of one hundred dollars each, conditioned to prosecute the writ with effect, or to pay the party against whom the same is brought any costs which may be adjudged to him against the relator, (*q*) the Judge shall direct a writ of summons in

Writ in nature of *quo warranto*.

(*p*) The following may be the form of the recognizance:

IN THE QUEEN'S BENCH (*or* COMMON PLEAS).

UPPER CANADA, County (*or* United Counties) of ——. Be it remembered, that on the —— day of ——, in the year of our Lord one thousand eight hundred and ——, before me ——, of ——, Chief Justice (*or* a Justice, *or* a Commissioner for taking bail) in Her Majesty's Court of Queen's Bench (*or* Common Pleas) for Upper Canada, cometh ——, of ——, and ——, of ——, and acknowledge themselves severally and respectively to owe to ——, of —— (*here inserting the name or names of the person whose election is complained against*), as follows, that is to say, the said —— the sum of two hundred dollars, and the said —— and —— the sum of one hundred dollars each, upon condition that if the said —— do prosecute with effect the writ of summons in the nature of *quo warranto*, to be issued on an order of flat to be made at the instance and upon the relation of the said ——, against the said ——, to show by what authority he (*or* they) the said —— claims (*or* claim) to be (*here state the office so claimed*), and why he (*or* they) the said —— should not be removed therefrom [and (*where so claimed by the relator*) why he the said relator (*or* the party *or* parties entitled) should not be declared duly elected, and be admitted to the said office]; and if the said —— do pay to the said —— all such costs as the said Court of —— (*or* the Judge presiding in Chambers, at the City of Toronto, in the County of York, or the Judge of the County Court of the County of ——) shall direct in that behalf, then this recognizance to be void, otherwise to remain in full force.

Taken and acknowledged the day and year first above mentioned,

Before me ——

(*q*) The following may be the form of affidavit of justification:

IN THE QUEEN'S BENCH (*or* COMMON PLEAS.)

I, A. B., of, &c., one of the sureties in the recognizance hereto annexed, make oath and say as follows:

1. That I am a freeholder (*or* householder, *as the case may be*), residing at, &c.

2. That I am worth property to the amount of one hundred dollars over and above what will pay all my just debts (*if bail in any other action, add* "and for every other sum for which I am now bail").

3. That I am not bail in any other action or proceeding (*or*, except for E. F., at the suit of G. H., in the Court of, &c., in the sum of, &c.)

And I, C. D., of, &c., the remaining surety in the recognizance hereto annexed, make oath and say as follows:

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the nature of a *quo warranto* (*r*) to be issued to try the matters contested. (*s*) 29-30 V. c. 51, s. 131, sub. 1.

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1. That I am a freeholder, &c. (*as before*).

The above named deponents, A. B. and C. D., were severally sworn before me, at, &c., in the County of, &c., this —— day of ——, A.D. 18—. } A. B. C. D.

*A Commissioner, &c.*

(*r*) The following may be the form of the Judge's fiat:

IN THE QUEEN'S BENCH (*or* COMMON PLEAS).

Upon reading the statement of ——, of ——, in the County of ——, complaining of the undue election and usurpation of the office of ——, by ——, [and (*if so, stating*) that the said —— (*relator or other person named*) was (*or* were) duly elected, and ought to have been returned to the said office], and upon reading the affidavits filed in support of the said statement; and also upon reading the recognizance of the said ——, and sureties therein named, and the same being allowed as sufficient; I do order that a writ of summons do issue, calling upon the said —— (*the party whose election is complained of*) to show by what authority he (*or* they) the said —— (*the party whose election is complained of*) now exercises or enjoys (*or* exercise and enjoy) the said office [and why (*if so claimed*) he (*or* they) the said —— should not be removed therefrom, and the said —— (*relator or other person or persons named*) should not be declared duly elected, and be admitted thereto], returnable before, &c.

Dated this —— day of ——, 18—.

(*s*) The following may be the form of writ:

UPPER CANADA.

VICTORIA, by the Grace of God, &c.

To ——, of ——, &c., in the County (*or* United Counties) of ——.

We command you (*and each of you*) that you (*and each of you*) be and appear before the Chief Justice or other Justice of our Court of Queen's Bench or Common Pleas for Upper Canada, presiding in Chambers, at the Judges' Chambers in our City of Toronto, on the eighth day after the day on which you shall be served with this writ, then and there to answer and show to such Chief Justice or Justice by what authority you claim to use, exercise or enjoy the office of ——, which office, upon the relation of ——, having as he says an interest in the election to the said office as a ——, we are informed that you have usurped and do still usurp [and that (*if so claimed*) the said —— (*relator or party or parties mentioned*) was (*or* were) and should have been declared duly elected and admitted thereto], and further to do and receive all those things which our said Chief Justice or Justice shall thereupon order concerning the premises.

Witness, the Honourable ——, Chief Justice of our said Court of —— (*or other Justice in whose name the writ is tested*), at Toronto, this —— day of ——, 18—, and in the —— year of our reign.

To the writ must be attached a copy of the relator's statement of objections and grounds, and of the names and additions of the

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**133.** The Judge of the Superior Court before whom the writ of summons is returnable, may order the evidence to be used on the hearing of the summons, to be taken *viva voce* before the Judge of the County Court, in the presence of counsel for, or after notice to, all parties interested, and such Judge shall return the evidence to the Clerk of the Crown of the Court at Toronto, and every party shall be entitled to a copy thereof. (*t*) *Vide* 35 V. c. 36, ss. 5 & 6. Evidence to be used on return of writ may be taken *viva voce* by leave of judge, &c.

**134.** In case the relator alleges that he himself or some other person has been duly elected, the writ shall be to try the validity, both of the election complained of, and the When the relator claims to be elected

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persons who shall have made the affidavits upon which the writ issued. (Rule 3.)

The notice may be in the following form:

IN THE QUEEN'S BENCH (*or* COMMON PLEAS.)

THE QUEEN, upon the relation of ——, against ——.

To —— and ——, named in the within (*or* annexed) writ of summons.

The within (*or* annexed) writ of summons has been issued at my instance and relation; and a statement concerning the premises, whereof a copy is hereunto annexed, is filed in the office of the Clerk of the Crown in this Court (*or* with the Clerk in Chambers at the city of Toronto), together with affidavits supporting the same; and the names and additions of the deponents to the said affidavits are hereunder written. And you are served with the said writ of summons to the intent that you do appear and answer, as herein commanded, or otherwise judgment will be given against you by your default, and your election to the therein mentioned office will be declared invalid, and you will be removed therefrom [and the said —— (*the relator, or* ——, *the party or parties, if any, alleged to be entitled*) therein named be declared duly elected, and will be admitted thereto in your place.]

*A. B.* in person,
or by
*C. D.* his Attorney.

The above mentioned deponents are:

——, of ——.
——, of ——.

(*t*) There was no such provision as the above in the Act of 1866. It for the first time appeared in the Corrupt Practices Municipal Elections Act (35 Vic. cap. 36, ss. 5 & 6). In some cases it may be necessary for the Judge before whom the case is returnable, in order to avoid needless expense, to avail himself of this section. It authorizes a proceeding in the nature of a commission to examine witnesses. The Judge may, if he see fit, command the attendance of witnesses before him. (See sec. 141.)



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alleged election of the relator or other person. (*u*) 29-30 V. c. 51, s. 131, sub. 2.

When several elections complained of.

**135.** In case the grounds of objection apply equally to two or more persons elected, the relator may proceed by one writ against such persons. (*v*) 29-30 V. c. 51, s. 131, sub. 3.

All to be tried by the same judge.

**136.** Where more writs than one are brought to try the validity of an election, or the right to a Reeve or Deputy Reeve or Reeves as aforesaid, all such writs shall be made returnable before the Judge who is to try the first, and such Judge may give one judgment upon all, or a separate judgment upon each one or more of them, as he thinks fit. (*w*) 29-30 V. c. 51, s. 131, sub. 4.

Writ, who to issue, and return day thereof.

**137.** The writ shall be issued by the Clerk of the process of the said Superior Courts, or by the Deputy Clerk of the Crown in the County in which the election took place, (*a*)

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(*u*) It seems to be well understood that before a Judge will entertain an application, not merely to make void the election of the party complained against, but to declare the relator or some other person elected in his stead, it must be shown, to the satisfaction of the Judge, that notice had been given of the disqualification of the successful candidate at such a time and in such a manner as must have made the electors aware that if they voted for that candidate their votes would be thrown away. (See note *u* to sec. 75.)

(*v*) It was, under the statute 12 Vic. cap. 81, sec. 146, held that a private relator had no right by a writ of summons, in the nature of a *quo warranto*, either to attack the Township Council by name upon grounds which, if mentioned, must necessarily lead to a dissolution of the body, or to attack the whole Council in one proceeding, through the individual names of every member of it. (*The Queen ex rel. Lawrence* v. *Woodruff*, 8 U. C. Q. B. 336.) But the law appears to have been in this respect afterwards amended (see 13 & 14 Vic. cap. 64, sch. No. 23, and 16 Vic. cap. 181, s. 27), and sec. 143 of this Act appears to be in the amended and extended form.

(*w*) At an election there may be several candidates; so there may be several persons elected to office. One person may see fit to contest the election of any successful candidate; so another person may see fit to contest the election of another of the successful candidates. Each relator complying with this statute, may have his own separate and independent writ. In this way there may be several writs brought to try the validity of the same election. When such is the case, all the writs are to be made returnable before the Judge who is to try the first. One object is obvious, and that is, to preserve uniformity of decision. (*The Queen ex rel. Forward* v. *Detlor*, 4 Prac. R. 198.) Where the first relation is collusive, and merely intended to protect the defendant in the enjoyment of office, it may be disregarded. (*The Queen ex rel. McLean* v. *Watson*, 1 U. C. L. J. N. S. 71.)

(*a*) If not tested on the day it was issued, it would be irregular. (*The Queen ex rel. Linton* v. *Jackson*, 2 Cham. R. 18.) But the irregularity may be waived by appearance. (*Ib.*)

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and shall be returnable before the Judge in Chambers at the proper Court at Toronto, or before the Judge of the County Court at a place named in the writ, (*b*) upon the eighth day after service, computed exclusively of the day of service, or upon any later day named in the writ. (*c*) 29-30 V. c. 51, s. 131, sub. 5.

**138.** The Judge before whom the writ is made returnable, or is returned, may, if he thinks proper, order the

Returning officer may be made a party.

(*b*) Although a County Court Judge may grant a fiat for the writ, it is always to be issued out of one of the Superior Courts. It is suggested that the fiat should state before what Judge the writ is to be returnable. It has been held that a County Court Judge may order the writ to issue returnable before a Judge of a Superior Court. (*The Queen ex rel. Lutz* v. *Williamson*, 1 Prac. R. 94.) In such case it is the duty of the relator to see that the proper papers are transmitted to Toronto. (*Ib.*)

(*c*) Thus, a writ served on Monday of one week would be returnable on Tuesday of the ensuing week, "or upon any later day named in the writ."

The following may be the form of affidavit of service:

IN THE QUEEN'S BENCH (*or* COMMON PLEAS).

THE QUEEN, on the relation of ——, against ——.

——, of ——, in the ——, maketh oath and saith, that he did, on the —— day of ——, personally serve the above named defendant (*or* defendants) with the annexed writ of summons, by delivering to him (*or* each of them) a true copy thereof, on which said copy was endorsed a written notice, a copy whereof is hereto annexed, and to which said copy (*or* copies respectively) of the said writ was annexed a written copy of a statement of the above named relator, a copy of which said copy of statement is also hereunto annexed; and the deponent further saith, that the minute (*or* minutes) of the said service, written on the said writ of summons, was (*or* were) so written by this deponent within twenty-four hours after such service.

Sworn at ——, in the County of ——, this —— day of ——, 18—.

Before me ——.

Upon the return of the writ, the party or parties summoned may appear either in person or by attorney. (Rule No. 4, Appendix.) The manner of appearance is by endorsing on the back of the relator's statement, attached to the motion papers, the words, "The within named C. D. appears in person (*or* by attorney, *as the case may be*) to answer the grounds of objection to his election which are within stated." (*Ib.*) If on the return no appearance be entered, the Judge sitting in Chambers may, before rising on that day, direct an entry to be made on the back of the statement, as follows: "The within named C. D. (*and E. F.*) being duly summoned, hath (*or* have) not appeared to answer the matters within objected." (Rule No. 5, Appendix.) This entry, if not made on the day directed, may be made on a subsequent day. (*Ib.*) The Judge may thereupon, on that or any subsequent day, proceed to hear and determine the matter. (Rule No. 7, Appendix.)

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issue of a writ of summons at any stage of the proceedings to make the Returning Officer a party thereto. (*d*) 29-30 V. c. 51, s. 131, sub. 6.

Service to be personal, unless excused by judge.

**139.** Every writ under this section shall be served personally (*e*) unless the party to be served keeps out of the way to avoid personal service, in which case the Judge,

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(*d*) "Is made returnable, *or* is returned." This expression appears to be used in order that a writ "returnable" on the face of it before a Judge named therein, may be "returned" to and acted upon by any Judge presiding in Chambers, or the Judge presiding in the County Court for the time being, according as the Judge mentioned in the writ belongs to a superior or an inferior court.

The writ to make a Returning Officer a party may be in the following form:

UPPER CANADA.

VICTORIA, by the Grace of God, &c.

Whereas, upon the relation of ——, in our Court of Queen's Bench (*or* Common Pleas), ——, it hath been ordered that a writ of summons should issue ——, to show by what authority he (*or* they) claims or exercises (*or* claim or exercise) the office of ——; and whereas it appears to our Justices of our Court of Queen's Bench (*or* Common Pleas), before whom the said writ hath been made returnable (*or as the case may be*), that you were the Returning Officer by whom the said —— hath (*or* have) been returned as duly elected to the said office, and that it is proper you should be made a party to the proceeding aforesaid: These are therefore to summon you to be and appear before the Chief Justice or other Justice of our Court of Queen's Bench (*or* Common Pleas) for Upper Canada, presiding in Chambers, at the Judges' Chambers, in our City of Toronto, on ——, then and there to answer such matters and things as shall then and there be objected against you, and further to do and receive all those things which said Court or said Justice shall thereupon order concerning you in the premises.

Witness, &c.

This writ must be served, with the like papers annexed, and the service thereof proved in like manner as is provided for other writs of summons. (Rule 6, Appendix.) The appearance and subsequent proceedings must also be the same. (*Ib.*)

(*e*) "Personal service" of a writ has never been defined by the Legislature. Each case is left to depend on its own particular circumstances. The Courts have not held it necessary to put process into the actual corporeal possession of the defendant, to constitute personal service, but have looked more to the object of the service —timely notice to defendant of intended legal proceedings against him. (Har. C. L. P. A., 2nd Ed., note *v* to sec. 16, p. 17.) In general a copy of the writ should be left with defendant, and the original shown to him if he desire to see it. (*Goggs* v. *Lord Huntingtower*, per Alderson, B., 1 D. & L. 599.) The copy of the writ must be left with, and not merely shown to defendant. (*Worley* v. *Glover*, 2 Str. 877.) Though defendant refuse to take the copy, if the person serving it bring it away with him, the service will be defective.

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upon being satisfied thereof by affidavit or otherwise, may make an order for such substitutional service as he thinks fit. (*f*) 29-30 V. c. 51, s. 131, sub. 7.

The judge may allow certain persons to intervene and defend.

**140.** The Judge before whom the writ is returned may allow any person entitled to be a relator to intervene and defend, and may grant a reasonable time for the purpose; and any intervening party shall be liable or entitled to costs like any other party to the proceedings. (*g*) 29-30 V. c. 51, s. 131, sub. 8.

Judge shall try summarily.

Evidence and trial.

**141.** The Judge shall, in a summary manner, upon statement and answer, without formal pleadings, hear and determine the validity of the election, or the right to a Reeve, or Deputy Reeve or Reeves, and may, by order, cause the Assessment Rolls, Collectors' Rolls, Poll Books and any other records of the election to be brought before him, and may inquire into the facts on affidavit or affirmation, or by oral testimony, or by issues framed by him, and sent to be tried by jury by writ of trial directed to any court named by the Judge, or by one or more of these means, as he deems expedient; (*h*) subject, however, to the

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(*Pigeon* v. *Bruce et al*, 8 Taunt. 410.) Where the copy was thrust through the crevice of a door to defendant, who had locked himself in, the service was held to be sufficient. (*Smith* v. *Wintle*, Barnes, 405.) Service upon a wife, agent or servant, is not personal service. *Frith* v. *Lord Donegal*, 2 Dowl. P. C. 527; *Davies* v. *Morgan*, 2 C. & J. 237; *Goggs* v. *Lord Huntingtower*, 1 D. & L. 599; *Christmas* v. *Eicke*, 6 D. & L. 156.)

(*f*) Personal service can only be dispensed with under the circumstances here mentioned. (*The Queen ex rel. Arnott* v. *Marchant, et al* 2 Cham. R. 167.)

(*g*) The only persons allowed to intervene are persons entitled to be a relator, as to which see note *k* to sec. 131.

(*h*) The duty and the powers of the Judge are here mentioned.

The duty is, in a summary manner, upon statement and answer, without formal pleadings, to hear and determine, &c.

The powers are:

1. To cause the Assessment Rolls, Collectors' Rolls, Poll Books, and any other records of the election to be brought before him.

2. To inquire into the facts,
   *On* affidavit or affirmation,
   *Or* by oral testimony,
   *Or* by issues framed and sent to be tried by a jury,
   *Or* by one or more of these means, as he may deem expedient.

If any question be raised as to whether the candidate or any voter has been guilty of bribery or undue influence, under the meaning of sections 153 or 154 of this Act, "Affidavit Evidence" is not to be used. (See sec. 156.)

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provisions of section one hundred and fifty-six. 29-30 V. c. 51, s. 131, sub. 9; *Vide* 35 V. c. 36, s. 5.

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The following may be the form of writ of trial:

[L.S.] VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the faith.

To the Judge of the County Court of the County of ——

Greeting:

Whereas, upon the trial of the validity of an election of ——, chosen upon the —— day of ——, to be —— for the Township of ——, (*or as the case may be*) in the County of ——, and which election hath been complained of by E. F., as the relator, alleging (*as the case may be*) that he himself, or that he and C. D., &c., or that C. D., &c., was or were duly elected and ought to have been returned, it hath become material to ascertain whether (*here stating concisely the issues to be tried*) and whereas it is desired by ——, our Chief Justice (*or* Justice) of our Court of Queen's Bench (*or* Common Pleas) before whom the same is pending, that the truth of such matters as aforesaid may be found by a jury: We do, therefore, pursuant to the statute in such case made and provided, command you, that by twelve good and lawful men of the County of ——, who are in nowise akin to the said E. F., the relator in the said case, or to the said (*the other party or parties, naming him or them,*) and who shall be sworn truly to try the truth of the said matters, you do proceed to try the same accordingly; and when the jury shall have given their verdict on the matters aforesaid, we command you that you do forthwith make known to our said Chief Justice (*or* Justice) what shall have been done by virtue of this writ, with the finding of the jury hereon indorsed.

Witness, the Honorable ——, Chief Justice (*or* Justice) of our said Court at Toronto, this —— day of ——, in the —— year of our reign.

The following may be the form of indorsement of verdict thereon:

I hereby certify that on the —— day of ——, before me, L. M., Judge of the County Court of the County (*or* United Counties) of ——, came as well the within named relator as the within named (*the other party or parties*) by their attorneys (*or as the case may be*) and the jurors of the jury, by me duly summoned as within commanded, also came, and being sworn to try the matters within mentioned on their oath, said that, &c.

When the party or parties summoned has or have appeared, no more formal answer need be made by him or them to the relator's case than by affidavits filed in answer. (Rule No. 10, Appendix.) But the Judge may in his discretion require from either or any of the parties further affidavits or the production of any such evidence as the law allows. (*Ib.*) None of the proceedings had in any case for trying the validity of an election, or which follow the determination thereof, are to be set aside or held void on account of any irregularity or defect, which shall not, in the opinion of the Judge before whom the objection is made, be deemed such as to interfere with the just trial and adjudication of the case upon the merits. (Rule No. 18, Appendix.) Contempts in disobeying writs of summons, *certiorari*, *mandamus* or other process, rule or order of Court or of any Judge thereof, acting in the execution of the powers

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**142.** In case the election complained of be adjudged invalid, (*i*) the Judge shall forthwith, by writ, cause the

Judge shall remove person not duly elected, admit person elected, or confirm election, &c.

conferred by this Act, are to be certified into the Court from which the writ of summons issued, to be dealt with like other contempts of such Court in other cases. (Rule No. 16, Appendix.) The forms given may be changed when necessary, at the discretion of the Judge who tries or determines the case, to adapt the same to such particular case. (Rule No. 17, Appendix.)

It has been held that a Judge of a County Court cannot, in determining the validity of a contested election, incidentally decide against the validity of a Township By-law. (*The Queen ex rel. McLaughlin* v. *Hicks et al*, 5 U. C. L. J. 89.)

(*i*) The following may be the form of the judgment:

In the Queen's Bench (*or* Common Pleas) the Queen on the relation of —— against —— (*and* "A. B., Returning Officer, made a party by the order of a Judge.")

Be it remembered, that on the —— day of ——, in the year of our Lord one thousand eight hundred and ——, at the Judges' Chambers in the City of Toronto, before me, ——, Chief Justice (*or* Justice) of Her Majesty's Court of Queen's Bench (*or* Common Pleas) came as well the above named relator by —— his attorney as the above named —— by his (*or* their) attorney and service of the writ of summons hereunto annexed, having been duly proved upon affidavit and upon the said day and upon other days thereafter at the Chambers aforesaid, having heard and read the statement and proofs of the said relator, touching and concerning the usurpation by him alleged against the said —— of the office of —— in the said writ of summons mentioned (and of the alleged misconduct of said A. B. as Returning Officer at the said election) [and (*if so*) the election of (*the party or parties named*) thereto], and the answers and proofs of the said ——, and having heard the said parties by their counsel (*or as the case may be*), and upon due consideration of all and singular the premises now, that is to say, this —— day of ——, in the year aforesaid, I do adjudge and determine:

*First*—That the said relator had, at the time of his making his aforesaid complaint, an interest in the election to the said office of —— as a ——.

*Second*—That, &c.

*Third*—That, &c.

*Fourth*—That the said —— hath (*or* have) usurped, and doth (*or* do) still usurp the said office, and that he (*or* they) be removed therefrom [*or* that the election of —— to the said office was void, and that he (*or* they) be removed therefrom (*as the judgment may be*)]. And that the said relator [*or* the said (*naming the party or parties whose election is affirmed, when he or they are adjudged to be entitled to the said office*)] was (*or* were) duly elected thereto, and ought to have been returned, and is (*or* are) entitled in law to be received into, and to use, exercise and enjoy the said office.

And I do adjudge and determine that the said —— do not in any manner concern himself (*or* themselves) in or about the said office, but that he (*or* they) be absolutely forejudged and excluded from further using or exercising the same, under pretence of the said election [and

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person found not to have been duly elected to be removed, and in case the Judge determines that any other person was duly elected, the Judge shall forthwith order a writ to issue causing such other person to be admitted; (*k*) and in case

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further, that the said (*naming the relator or party whose election is affirmed*) be (*or* be respectively) admitted to the said office in his (*or* their) place (*or* places)].

And I do further order, adjudge and determine, that the said relator do recover against the said —— his costs and charges by him in and about the said relation and the prosecution thereof expended, to be taxed in the said Court.

All which the said writ of summons, and the said judgment, and the statements, answers and proofs of the said relator and of the said ——, and all other things had before me touching the same, I do hereby certify and deliver into the said Court, there to remain of record as a judgment of said Court, according to the form of the statute in such case made and provided. E. F., *J.*

The following may be the conclusion of a judgment for the defendant, to follow the word *affidavit*, in the foregoing form:

Thereupon now at this day, that is to say, on the —— day of —— aforesaid, at the Judges' Chambers at Toronto aforesaid, all and singular the relation and proofs of the said relator, and the answers and proofs of the said —— being seen and fully understood, I do consider and adjudge that the said office of —— so claimed by him (*or* them) the said —— be allowed and adjudged to him (*or* them), that the said —— be dismissed and discharged of and from the premises above charged upon him (*or* them) and also that he (*or* they) the said —— do recover against the said relator his (*or* their) costs by him (*or* them respectively) laid out and expended in defending himself (*or* themselves) in this behalf. All which, &c., (*as in the judgment for the relator.*)

The following may be added if costs allowed and taxed:

"Afterwards, that is to say, on the —— day of ——, in the —— year of the reign of our Lady the Queen, cometh, the said ——, and prayeth that his (*or* their) said costs, so as aforesaid adjudged to him (*or* them), be taxed and assessed according to the form of the statute in such case made and provided, and the said costs of the said ——, in and about his (*or* their) prosecution (*or* defence) aforesaid, and (*when the Returning Officer is a party*) of the said ——, in and about his defence aforesaid, so as aforesaid adjudged to him (*or* them), are now here accordingly taxed and assessed as follows, that is to say, the cost of the said —— at the sum of —— [and the costs of the said —— (*when Returning Officer entitled thereto*) at the sum of ——,] and the said ——, in mercy, &c."

(*k*) The following may be the form of writ for removal, &c.

VICTORIA, &c.

To the Corporation of —— (*the town, township, or city of.*)

Whereas on the —— day of —— in the year of our Lord one thousand eight hundred and —— at the Judges' Chambers in the City of Toronto, before —— Chief Justice (*or* one of the Justices) of our Court of Queen's Bench (*or* Common Pleas) for Upper Canada,

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the Judge determines that no other person was duly elected instead of the person removed, the Judge shall, by the writ, cause a new election to be held. (*l*) 29-30 V. c. 51, s. 131, sub. 10.

May cause new election.

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it was by the said Chief Justice (*or* Justice) adjudged and determined that —— of —— had usurped, and did then usurp, the office of —— [and that —— was (*or* were) duly elected thereto, and ought to have been returned, and was (*or* were) entitled in law to be received into, and to use, exercise and enjoy the said office,] all which has, by the said Chief Justice (*or* Justice) been duly certified into our Court of Queen's Bench (*or* Common Pleas,) pursuant to the statute in that behalf. Now, we being willing that speedy justice be done in this behalf, as it is reasonable, command that the said (*the person or persons, naming him or them, whose election has been declared invalid*) do not in any manner concern himself (*or* themselves) in or about the said office, but that he (*or* they) be absolutely forejudged, removed and excluded from further using or exercising the same, under pretence of his (*or* their) election thereto.* [And we do further command that the said (*the person or persons, naming him or them, who has or had been adjudged lawfully elected*) be forthwith admitted, received, and sworn into the said office, to use, exercise, and enjoy the same.] And we do hereby command you and every of you to obey, observe, and do all and every act, matter and thing that may be necessary, on the part of you or any of you in the premises, according to the purport, true intent and meaning of these presents, and of the statutes in that behalf, and that you make known to our Court of Queen's Bench (*or* Common Pleas) at Toronto, on the —— day of —— how this writ shall have been executed.

Witness, &c.

(*l*) The following may be the form of the writ for new election:

VICTORIA, &c.

To the Corporation of —— and to any Returning Officer or other person or persons to whom it shall of right belong to do any act necessary to be done, touching the election hereinafter commanded to be held:

Whereas (*as in the last precedent to the asterisk, omitting the part between brackets, and then proceed as follows:*) and we do further command that you, the said Municipal Corporation, and any Returning Officer or other person or persons, or such of you to whom the same shall of right belong, do, pursuant to and according to the statute in that behalf, cause an election to be as speedily held as shall be lawful, for the election of a person (*or* persons) in the place or stead of the said —— who has (*or* have) been removed as aforesaid; and that you, or such of you to whom the same doth of right belong, do administer to the person (*or* persons) who shall be so elected, the oath (*or* oaths) if any, in that behalf by law directed; and that you admit, or cause to be admitted, such person (*or* persons) so elected into the said office, and that you, the said Municipal Corporation, do show how this writ shall have been executed to our Court of Queen's Bench (*or* Common Pleas), at Toronto, on the —— day of ——.

Witness, &c.

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If all the members ousted, &c., writ for new election to go to the sheriff.

**143.** In case the election of all the members of a Council be adjudged invalid, the writ for their removal, and for the election of new members in their place, or for the admission of others adjudged legally elected, and an election to fill up the remaining seats in the Council, shall be directed to the Sheriff of the County in which the election took place; (*m*) and the Sheriff shall have all the powers for causing the election to be held which a Municipal Council has in order to supply vacancies therein. (*n*) 29-30 V. c. 51, s. 131, sub. 11.

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(*m*) The following may be the form of writ in such case:

VICTORIA, &c.

To the Sheriff of the County (*or* United Counties) of ——,

Greeting:

Whereas (*the same as in the first precedent of a mandamus* (p. 104) *to the end of the words "adjudged and determined," then say*) that the election (*or* elections) of all the members of the Municipal Corporation of ——, returned as elected at the election (*or* elections) of members of the said Corporation held (*describing the time or times and place or places of such election* (*or* elections) was (*or* were) invalid or void in law, and that (*naming them all*) had usurped (*proceeding as in the first precedent, adopting the plural form, to the asterisk, and then as follows:*) and we do hereby further command you, the said Sheriff, that you do, pursuant to the statute in that behalf, admit and return and swear into, or cause the said (*naming the person adjudged to have been duly elected*) to be forthwith admitted or returned, and sworn into the said office, to use, exercise, and enjoy the same, and that you do and perform, or cause to be done and performed, all and every act or acts, thing or things necessary to be done and performed in the premises: and we hereby command and strictly enjoin all and every person or persons to whom the same shall lawfully belong, to be aiding and assisting you, and to do all and every lawful and necessary act to be done by him or them in the premises, according to the purport, true intent and meaning of these presents, and of the statutes in that behalf; and how you shall have executed this writ make known to our Court of Queen's Bench or Common Fleas, at Toronto, on the —— day of —— next, and have then there this writ.

Witness, &c.

A writ requiring a new election may be in the following form:

VICTORIA, &c.

To the Sheriff, &c., (*as in the first precedent of a mandamus* (p. 104) *to the asterisk, omitting the part between the brackets, and adopting the plural form, then concluding as follows:*) and that you do every act necessary to be done by you in order to the due election and admission of members of the said Corporation, in the place and stead of the persons whose elections have been so declared invalid; and we hereby command, and strictly enjoin all and every person and persons (*continuing as in the last precedent to the end.*)

Witness, &c.

(*n*) Sections 94 & 125 of this Act, taken together, show that the Sheriff is to appoint a Returning Officer when an old Council has

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**144.** Any person whose election is complained of may, unless such election be complained of on the ground of corrupt practices on the part of such person, within one week after service on him of the writ, (*o*) transmit post paid, through the post office, directed "To the Clerk of the Judge's Chambers, at Osgoode Hall, Toronto," or to "The Judge of the County Court, of the County of " *(as the case may be)*, or may cause to be delivered to such Clerk or Judge, a disclaimer signed by him, to the effect following: (*p*) Defendant may disclaim, except in certain cases. Mode of proceeding.

I, *A. B.*, upon whom a writ of summons, in the nature of a *Quo Warranto*, has been served for the purpose of contesting my right to the office of Township Councillor *(or as the case may be)* for the Township of , in the County of *(or as the case may be)*, do hereby disclaim the said office, and all defence of any right I may have to the same. Form.

Dated day of

(Signed) *A. B.*

29-30 V. c. 51, s. 131, sub. 12.

**145.** Such disclaimer, or the envelope containing the same, shall moreover be endorsed on the outside thereof, with the word "Disclaimer," and be registered at the post office where mailed. (*q*) 29-30 V. c. 51, s. 131, sub. 13. Posting and registry of disclaimer.

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been superseded by a new one. Where the members of the new Council have been ejected there can be no longer any Councillors in possession of the office. The object therefore of this clause is to enable the Sheriff to take the steps necessary to the election or admission of new members with a view to the re-organization of the Council.

(*o*) The writ is to be generally made returnable on the eighth day after service, computed exclusively of the day of service; and the design of this clause is, that the disclaimer, if any, should be filed before the writ is returned.

(*p*) When the writ has been issued by direction of a Judge of one of the Superior Courts and is returnable before a Judge of any such Court, the disclaimer should be addressed, "To the Clerk of Judge's Chambers, at Osgoode Hall, Toronto," or if returnable before the Judge of the County Court, then to "The Judge of the County Court of the County of," &c. In either case, the disclaimer so addressed may, if preferred, be mailed or else be delivered to the proper Judge or Clerk. If mailed, the envelope must on the outside be endorsed with the word "Disclaimer." The letter must also be registered in the office where mailed. (Sec. 145.) If the party, instead of disclaiming under this section or sec. 146, accept office, he can only resign under circumstances detailed in sec. 124 and sec. 130 of this Act.

(*q*) Two things are here made requisite:

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Person elected may disclaim at any time before his election is complained of.

**146.** Where there has been a contested election, the person elected may, at any time after the election, and before his election is complained of, deliver to the Clerk of the Municipality a disclaimer signed by him as follows: (*r*)

Form.

I, *A. B.*, do hereby disclaim all right to the office of Township Councillor *(or as the case may be)* for the Township of *(or as the case may be)*, and all defence of any right I have to the same. 29-30 V. c. 51, s. 131, sub. 17.

Disclaimer to operate as resignation. Who to be deemed elected.

**147.** Such disclaimer shall relieve the party making it from all liability to costs, (*s*) and when a disclaimer has been made in accordance with either of the preceding sections it shall operate as a resignation, (*t*) and the candidate having the next highest number of votes shall then become the Councillor, or other officer as the case may be. (*u*) *Vide* 29-30 V. c. 51, s. 131, sub. 17.

Duplicate disclaimer to be delivered to clerk.

**148.** Every person disclaiming shall deliver a duplicate of his disclaimer to the Clerk of the Council, (*v*) and the Clerk shall forthwith communicate the same to the Council. *Vide* 29-30 V. c. 51, s. 131, sub. 14.

Costs of person disclaiming.

**149.** No costs shall be awarded against any person duly disclaiming, unless the Judge is satisfied that such party

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1. That the disclaimer or envelope containing the same be endorsed on the outside thereof with the word "disclaimer."
2. That it be registered at the post office where mailed.

(*r*) Disclaimers are of two kinds:

1. Disclaimer under sec. 144, which must be transmitted "within one week after service of the writ."
2. Disclaimer under the section here annotated, which may be transmitted "at any time after the election," but "before the election is complained of."

In the case of the former there are no costs, unless the Judge is satisfied that the party disclaiming consented to his nomination as a candidate, or accepted the office.

In the case of the latter there can be no costs, as the disclaimer must be made before writ, and when made relieves the party "from all liability." (See sec. 147.)

(*s*) See note *r* to sec. 146.

(*t*) See sec. 124.

(*u*) No proceeding in such a case is necessary to entitle "the next highest" to the seat. He becomes entitled by the fact of the disclaimer.

(*v*) This is to apprize the Council that the party no longer claims the seat.

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consented to his nomination as a candidate, or accepted the office, in which case the costs shall be in the discretion of the Judge; (*w*) 29-30 V. c. 51, s. 131, sub. 15.

**150.** In all cases, not otherwise provided for, costs shall be in the discretion of the Judge. (*x*) 29-30 V. c. 51, s. 131, sub. 16. Costs generally.

(*w*) The rule is, that the costs of a contested election are in the discretion of the Judge. (Sec. 150.) The exception is, where a regular disclaimer is made within the time limited for the purpose, in which case no costs are to be awarded against the party who disclaims. If, however, the Judge be satisfied that the party "consented to his nomination as a candidate, or accepted the office," the case comes within the rule, and not the exception. Where defendant before this Act personally contested the election, but on its being moved against sent in a disclaimer praying to be relieved from costs, because, having been duly elected, he was obliged, under a penalty, to accept office, the learned Judge in Chambers refused to relieve him of costs. (*The Queen ex rel. Featherstone* v. *McMonies*, 2 Cham. R. 137.) But if the defendant disclaim in proper time, and be free from any imputation of blame, it is not usual to give costs against him. (*The Queen ex rel. Coupland* v. *Webster*, 6 U. C. L. J. 89.) If the disclaimer be filed too late, clearly costs are in the discretion of the Judge. (*Ex rel. Hawke* v. *Hall*, 2 Cham. R. 182.) On the 4th March, the relator obtained a summons to contest defendant's election, and the writ and statement were served on that day. On the 9th, defendant sent a written disclaimer to the Judge in Chambers, which was received on the 10th, and on the 13th the relator's affidavit was filed stating that defendant had consented to his own nomination, and had taken his seat, &c. No proof of the grounds taken in the statement were ever filed, and the case was then allowed to drop. On the 27th April, the relator filed a further affidavit stating that after the disclaimer the Reeve had ordered a new election, at which he, the relator, was duly elected, but that the defendant persisted in retaining his seat, contending that it had not become vacant by his disclaimer. Sir J. B. Robinson, under these circumstances, refused to give judgment, as if the matter were still pending on the summons, there being no proof of any of the objections taken, but held that the disclaimer could not nullify the election, as the parties seemed to have supposed; and that if the Council should support the relator in his seat, the defendant or some one else must move against his election on the ground that it was illegally ordered. (*The Queen ex rel. Freeman* v. *Jones*, 1 Prac. R. 306.) The Judge, who was in Chambers at the return of the summons, might perhaps enter an adjournment to a certain day, and call for proofs as to the first election, and give judgment. (*Ib.*)

(*x*) The Judge has a discretion to withhold costs altogether from either side, if he see fit. (*The Queen ex rel. Swan* v. *Rowat*, 13 U. C. Q. B. 340), or to distribute the costs, that is, to order each party to pay his own costs. (*Per* Hagarty, J., *The Queen ex rel. Gordanier* v. *Perry et al*, 3 U. C. L. J. 90.) Where it was sworn that intending voters for an unsuccessful candidate were obstructed in the approach to the polling place by a crowd under the control of

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Judge to return his judgment to the court in term; it shall be final.

Mode of enforcing obedience.

**151.** The decision of the Judge shall be final, and he shall, immediately after his judgment, return the writ and judgment with all things had before him touching the same into the Court from which the writ issued, there to remain of record as a judgment of the said Court; (*a*) and he shall, as occasion requires, enforce such judgment by a writ in the nature of a writ of peremptory *Mandamus*, and by writ of

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one of the successful candidates, and neither the fact of the obstruction nor the control was unequivocally denied by that candidate, the election as to him was set aside with costs. (*The Queen ex rel. Gibbs* v. *Branighan*, 3 U. C. L. J. 127.) The tendency of modern decisions is not to make a party pay costs unless it be shown that he himself participated in the improper conduct for which the election is set aside. (*The Queen ex rel. Davis et al* v. *Wilson et al.*, *Ib.* 165; *The Queen ex rel. Walker* v. *Mitchell et al*, 4 Prac. R. 218.) But relators are not to be discouraged from bringing cases of invalid elections under notice of a Judge at the peril of having to lose the costs necessarily incurred. (*The Queen ex rel. Rollo* v. *Beard*, 1 U. C. L. J., N. S.. 126; *The Queen ex rel. Charles* v. *Lewis et al*, 2 Cham. R. 177; *The Queen ex rel. Hawke* v. *Hall*, *Ib*, 187; *The Queen ex rel. Dillon* v. *McNeil*, 5 U. C. C. P. 137.) In one case a learned Judge refused to make a relator pay costs, though unsuccessful, where it was shown he had acted in good faith in bringing forward his complaint. (*The Queen ex rel. Crosier* v. *Taylor*, 6 U. C. L. J. 60.) So where a Returning Officer, made a party to the proceedings, was shown to have acted in good faith, though illegally, costs were not imposed upon him. (*The Queen ex rel. Coupland* v. *Webster*, *Ib.* 89.) Where the Returning Officer was acquitted of blame, and relator's statement was shown not to be strictly correct, the latter was ordered to pay costs to the former. (*The Queen ex rel. Hawke* v. *Hall*, 2 Cham. R. 182.) The Master, on taxing costs to the successful party, should consider whether or not the successful party produced an unnecessary number of affidavits, or affidavits unnecessarily diffuse, and act accordingly. (*The Queen ex rel. Walker* v. *Hall*, 6 U. C. L. J. 138.) A By-law to pay the costs of a contested election is illegal, and will be quashed with costs. (*In re Bell* v. *Manvers*, 2 U. C. C. P. 507; A Municipality cannot legally support such a contest, or indemnify one of the parties to a contest of the kind. (*Ib.*) But the cost of litigation undertaken *bona fide*, and on reasonable grounds, for the assertion or defence of corporate rights, may be paid out of corporate funds. (*The Queen* v. *Bridgewater*, 10 A. & E. 281; *The Queen* v. *Lichfield*, 4 Q. B. 893; *The Queen* v. *Leeds*, *Ib.* 796; *The Queen* v. *Warwick*, 15 L. J. Q. B. 306; *Attorney-General* v. *Wigan*, 1 Kay, 268; *Lewis* v. *Rochester*, 9 C. B. N. S. 401; *The Queen* v. *Tamworth*, 19 L. T. N. S. 434.

(*a*) Under the old Act, leave was given to appeal from the decision of the Judge to the full Court. (*The Queen ex rel. McKeon* v. *Hogg*, 15 U. C. Q. B. 140.) That privilege was in the Municipal Institutions Act of 1858, when introduced to the Assembly, but was struck out in Committee. The object, no doubt, is effectually to ensure the summary relief intended. The danger is that there may be a want of uniformity of decision.

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execution for the costs awarded. (*b*) 29-30 V. c. 51, s. 131, sub. 18.

The judges to make rules, &c.

**152.** The Judges of the Superior Courts of Common Law, or a majority of them, may, by rules made in term time, settle the forms of the writs of summons, *Certiorari*, *Mandamus* and execution, (*c*) and may regulate the practice respecting the suing out, service and execution of such writs, and the punishment for disobeying the same, or any other writ or order of the Court or Judge, and respecting the practice generally, in hearing and determining the validity of such elections and appointments, and respecting the costs thereon; and may from time to time rescind, alter, or add to such rules; but all existing rules shall remain in force until rescinded or altered as aforesaid. (*d*) 29-30 V. c. 51, s. 131, sub. 19.

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(*b*) The power of a Judge to award costs for or against a relator, defendant or Returning Officer, is in general exercised only on the final determination of the case. (*The Queen ex rel. Arnott* v. *Marchant et al*, 2 Cham. R. 167.)

(*c*) The following may be the form of *fi. fa.* for costs:

VICTORIA, &c.

To the Sheriff of the County (*or* United Counties) of ——, Greeting:

We command you, that you levy, or cause to be levied, of the goods and chattels of A. B., late of ——, the sum of ——, which hath lately been adjudged to C. D., of ——, in our Court of Queen's Bench (*or* Common Pleas), at Toronto, according to the form of the statute in such cases made and provided, for his costs by him laid out and expended in his defence upon a certain writ of summons in the nature of a *quo warranto*, issued out of our said Court against the said C. D., upon the relation of the said A. B., for usurping the office of ——, in our —— of ——, in your County (*or* Counties) (*if the Returning Officer has been made a party, add here*, "to which proceeding E. F., the Returning Officer at the election of the said C. D. to the said office, was made a party"); whereof the said A. B. is convicted, as in our said Court appears of record; and that you have that money before our said Court, at Toronto, immediately after the execution hereof, to satisfy the said C. D. for his costs aforesaid, and have you then there this writ.

Witness, &c.

*N.B.—When the Returning Officer has been made a party, and is entitled to costs, the* fieri facias *must be framed accordingly.*

(*d*) The powers conferred are:

1. To *settle* the forms of the writs of summons, certiorari, mandamus and execution.

2. To *regulate* the practice respecting the suing out, service and execution of such writs, and the punishment for disobeying the same or any other writ or order of the Court or Judge, *and* respecting the

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DIVISION VII.—CORRUPT PRACTICES TO PREVENT.

*Bribery and Undue Influence defined. Sec. 153–154.*
*Certain Payments Lawful. Sec. 155.*
*Evidence to be Viva Voce. Sec. 156.*
*Effect of Conviction. Sec. 157–159.*
*How Penalties Recoverable. Sec. 160.*
*Report and Record of Convictions. Sec. 161, 162.*
*Witnesses, how Procured, and Self-crimination no excuse. Sec. 163, 164.*
*Proceedings, when to be taken. Sec. 165.*
*Publicity to Law against Corrupt Practices. Sec. 166.*

Certain persons to be deemed guilty of bribery.

**153.** The following persons shall be deemed guilty of bribery, (*e*) and shall be punished accordingly :—

Giving money to voters, &c.

(1.) Every person who shall directly or indirectly, by himself, or by any other person on his behalf, (*f*) give, lend,

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practice generally in hearing and determining the validity of such elections and appointments, *and* respecting the costs thereon.

3. To rescind, alter or add to such rules.

But it is declared that all existing rules are to remain in force until rescinded or altered. The existing rules which have been in force since the Municipal Act of 1849 will be found in the Appendix.

(*e*) Bribery was an offence at Common Law and independently of any statute. (*The King* v. *Pitt et al*, 3 Burr, 1338.) So the mere offer of a bribe was at Common Law an offence. (*The King* v. *Vaughan*, 4 Burr, 2500.) But in order, if possible, effectually to put it down, the Legislature has from time to time interfered. In the year 1854 the Imperial Legislature, after all that had previously been done, passed an Act in which it was recited "that the laws now in force for preventing corrupt practices in the election of members to serve in Parliament have been found insufficient." (17 & 18 Vic. cap. 102.) In the hope of remedying the insufficiency of the law, the statute called "The Corrupt Practices Prevention Act, 1854," was framed. (*Ib.*) Its provisions were embodied in statutes of the late Province of Canada and of the Legislature of Ontario, as regards Parliamentary elections (Stat. Can. 23 Vic. cap. 17; Stat. Ont. 32 Vic. cap. 21, s. 67), and in 1872 were applied by the Local Legislature to Municipal Elections. (35 Vic. cap. 36.) The sections here annotated are substantially the same as the provisions of the Imperial statute 17 & 18 Vic. cap. 102.

(*f*) It is perfectly clear that the meaning which is to be given in this Act of Parliament to the words "any other person on his behalf," is every person other than the candidate for whose act he is responsible. (*Per* Baron Martin, in *The Norwich Election Petition*, 19 L. T. N. S. 617.) In Parliamentary election law it has long been established that where a person has employed an agent for the purpose of procuring his election he, the candidate, is responsible for the act of that agent, though he himself did not intend to authorize it.

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or agree to give or lend, or shall offer or promise any money or valuable consideration, or shall give or procure, or agree to give or procure, or offer or promise, any office, place or employment, to or for any voter, or to or for any person on behalf of any voter, or to or for any person in order to induce any voter to vote or refrain from voting at a Municipal election, or upon a By-law for raising any money or creating a debt upon a Municipality or part of a Municipality, Procuring office, &c., for voters.

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(*The Taunton Case*, 1 O'M. & H. 182.) It is, in point of fact, making the relation between a candidate and his agent the relation of master and servant, and not of principal and agent. (*The Westminster Case*, *Ib.* 95; *The Wigan Case*, *Ib.* 191.) A variety of cases might be put, in which a principal is liable even civilly for an act of an agent which he never intended, and at which he is exceedingly displeased. (See *The Westbury Case*, *Ib.* 54.) A well established case of bribery by an agent avoids an election, even though the agent acted against instructions. (*South Grey Election*, 8 C. L. J. N. S. 17.) It is now, as regards elections for the Local Legislature, expressly declared that "when it is found, upon the report of a Judge upon an election petition, that any corrupt practice has been committed by any candidate at an election, *or by his agent*, whether with or without the actual knowledge and consent of such candidate, the election of such candidate, if he has been elected, shall be void." (36 Vic. cap. 2, s. 3, sub. 1, Ont.) Agency is a result of law to be drawn from the facts in the case, and from the acts of individuals. (*The Sligo Case*, 1 O'M. & H. 301.) There is always a great difference in the degrees of agency. As you go lower down, you require more distinctly to show that the act was done by a person whom the candidate would be responsible for; as you come higher up, it is more as if the candidate had done it himself. (*Hereford Case*, *Ib.* 195.) No one can lay down a precise rule as to what would constitute evidence of being an agent. (*The Bewdley Case*, *Ib.* 17, s.c. 19 L. T. N. S. 676; *The Bridgewater Case*, 1 O'M. & H. 115.) A man's wife, if she interfere in the election, is *ipso facto* his agent. (*Cashel Case*, *Ib.* 288.) It may be said that an act, however trifling, is evidence of agency, and that an aggregate of isolated acts will by their cumulative force constitute agency. (*The Bewdley Case*, *Ib.* 18.) Canvassing alone, and with or without a canvassing book, is evidence of agency. (*The Stalybridge Case*, *Ib.* 68; *The Lichfield Case*, *Ib.* 25; *The Windsor Case*, 19 L. T. N. S. 613; *The Londonderry Case*, 21 L. T. N. S. 709.) But canvassing, independently of the candidate, and for an independent association, rebuts the inference of agency. (*The Westminster Case*, 1 O'M. & H. 91.) "I cannot concur in the opinion that any supporter of a candidate who chooses to ask others for their votes, and to make speeches in his favour, can force himself upon the candidate as an agent." (*Per* O'Brien, J., *The Londonderry Case*, 21 L. T. N. S. 712.) Ratification by the principal after the act is equivalent to a previous authority. (*The Tamworth Case*, 1 O'M. & H. 80; *The Blackburn Case*, *Ib.* 200.) Agency ceases with the election. (*The Salford Case*, *Ib.* 137; *The King's Lynn Case*, *Ib.* 208; *The Bridgewater Case*, *Ib.* 114.) Conversation after the election is over is inadmissible without previous proof of agency. (*The Waterford Case*, 2 O'M. & H. 3.)



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pality for any purpose whatever, (*g*) or who shall corruptly do any such act as aforesaid, on account of such voter having voted for or refrained from voting at any such election, or upon any such by-law; (*h*)

Or for persons influencing voters.

(2.) Every person who shall, directly or indirectly, by himself or by any other person in his behalf, (*i*) make any gift, loan, offer, promise or agreement as aforesaid, to or for any person, in order to induce such person to procure or endeavour to procure the return of any person to serve in any Municipal Council, or to procure the passing of any such

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(*g*) This section gives a new and enlarged definition of bribery. An *offer* is included in the definition. (See *Bush* v. *Ralling*, Sayer, 239; *Sulston* v. *Norton*, 3 Burr, 1235; *Harding* v. *Stokes*, 2 M. & W. 233; *Henslow* v. *Fawcett*, 3 A. & E. 51.) "It cannot be supposed that an offer to bribe is not as bad as the actual payment of money." (*The Coventry Case*, 1 O'M. & H. 107; *The Staleybridge Case*, *Ib.* 66; see also *The Taunton Case*, *Ib.* 183.) But the *evidence* to prove an offer is usually required to be stronger than when money has actually passed. (*The Cheltenham Case*, *Ib.* 64.) Money given to a *disqualified* voter is apparently within the terms of the Act. (*Guildford Case*, *Ib.* 15.) The section speaks of the giving, lending, or agreeing to give or lend "money or valuable consideration," or "office, place or employment;" "anything, great or small, which is given to procure a vote," is a bribe. (*The Coventry Case*, *Ib.* 100.) The promise of refreshments is bribery. (*The Bodmin Case*, *Ib.* 124.) So a promise before a poll to repay a voter after the money expended by him upon drink. (*The Hastings Case*, *Ib.* 218.) It matters not how long before the election the promise may have been made. (*The Sligo Case*, *Ib.* 302.) The charge of bribery, however, is one that ought to be established by clear and satisfactory evidence. (*The Londonderry Case*, *Ib.* 278.) Mere suspicion of bribery is not enough to upset an election. (*Ib.*) The Judge should be satisfied beyond doubt that the offence is made out. (*The Lichfield Case*, 20 L. T. N. S. 11.)

(*h*) If the money be given *before* the election, to induce a man to vote or refrain from voting, the act is *ipso facto* bribery. But if *after* the election, it must be shown to have been done "*corruptly*." An act done corruptly means an act done by a man knowing that he is doing wrong, and doing it with an evil object. (*The Bradford Case*, 1 O'M. & H. 37.) Corruptly means to influence votes. (*The Cheltenham Case*, 1 O. M. & H. 64.) "To produce the result which the Legislature intended to forbid." (*The Wallingford Case*, *Ib.* 60.) Contrary to the intention of the Act, with a motive or intention by means of it to produce an effect upon the election." (*The Hereford Case*, *Ib.* 195.) The Judge must satisfy his mind whether that which was done was really done in so unusual and suspicious a way, that he ought to impute, to the person who has done so, a criminal intention in doing it. (*Bodmin Case*, *Ib.* 125; see also *Glengarry Case*, June, 1871, not reported.)

(*i*) See note *f* to sub. 1, sec. 153.

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By-law as aforesaid, or the vote of any voter at any Municipal election, or for any such By-law; (*k*)

(3.) Every person who shall, by reason of any such gift, loan, offer, promise, procurement or agreement, procure or engage, promise or endeavour to procure the return of any person in any Municipal election, or to procure the passing of any such By-law as aforesaid, or the vote of any voter at any Municipal election, or for any such By-law; (*l*) Corruptly influencing voters.

(4.) Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person, with the intent that such money, or any part thereof, shall be expended in bribery at any Municipal election, or at any voting upon a By-law as aforesaid, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any such election, or at the voting upon any such By-law; (*m*) Advancing, &c., money for bribery, &c.

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(*k*) This sub-section is aimed at that offence which is known in England as "purchasing a borough." Of late such transactions have been very rare. An instance of it was exposed in 1858. The Committee in the Harwich Election, reported that G. W. P. was not duly elected; that G. W. P. entered into an engagement with J. A., through his solicitor, in accordance with the terms of which engagement the said G. W. P. was on his part to pay certain sums of money in the event of his return, and the said J. A. was to endeavour to procure the return of the said G. W. P. for the said borough. (Clerk on Elections, 99.) In the *Barnstaple Case*, 2 P. R. & D. 336, an agreement was proved in the following form:—"I will pay £400, and £1,000 within a week after the election at B." C., it was proved, had been very active in averting the threatened disfranchisement of the borough, and incurred expenses to the amount of £1,400 in so doing. It was in respect of this bill that the agreement was made. C. swore that it was no part of the understanding that he should procure L.'s return. But the election was held void. The fair payment of the expenses of a member, if he will stand, does not of itself constitute an illegality under this provision, although it constitutes a case calling for a full inquiry. (*The Coventry Case*, 1 O'M. & H. 97.) If the inquiry, according to what the learned Judge said, had shown that E. had agreed to give H. £5, he might say a farthing, in point of law; if he agreed to give him anything, if only a peppercorn, for the purpose of purchasing any influence which H. had with the electors of Coventry, and of advancing E.'s influence as a candidate at the election, it would have been bribery, and would have avoided the election. (*Per* Willes, *Ib.* 100.)

(*l*) The transaction intended by this and the preceding sub-section is one and the same. But while the preceding sub-section makes illegal the conduct of the giver, this makes illegal the conduct of the receiver. (See note *k* above.)

(*m*) The object of this subsection is to prevent the expenditure of money for purposes of bribery. If advanced or paid *before* the

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Voter receiving money, &c., for vote, or agreeing for money, &c., to vote, &c.

(5.) Every voter who shall, before or during any Municipal election, or the voting of any such By-law, directly or indirectly, by himself or by any other person in his behalf, receive, agree or contract for any money, gift, loan or valuable consideration, office, place or employment, for himself or any other person, for voting or agreeing to vote, or refraining or agreeing to refrain from voting at any such election, or upon any such By-law; (*n*)

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election, *with intent* that it shall be expended in bribery, it is illegal. If *knowingly* paid *after* the election in discharge of money expended in bribery, it is illegal. The word "knowingly," in this subsection, is used very much in the same sense as the word "corruptly" is used in the latter part of subsection 1. It is by no means an uncommon practice for a candidate to pay a large sum of money into the hands of two or three persons, or into the hands of a banker, with permission to certain persons to draw upon such sum of money. This occurs most frequently at elections where it is considered expedient that the candidate should know as little as possible of the means used to procure his return. Were the money so paid in to be expended wholly or partly in bribery, would such a candidate be guilty of bribery within the statute? Such conduct would be very suspicious, to say the least of it. (See Clerk on Elections, 101; see also remarks of Richards, C. J., *East Toronto Election Petition*, 8 U. C. L. J. N. S. 119.)

(*n*) While the preceding sub-sections relate more especially to the candidates and to persons acting on their behalf, this sub-section applies only to voters. The deprivation of the right to vote, or the forfeiture of a vote already given, is not to be imposed as a penalty upon any one, unless under the express enactment of the Legislature. There are other persons interested and affected by the vote, beside the voter. The candidate for whom he voted is interested in it, and so are the whole body of the electors who voted for the same candidate. One vote has, and may again, influence or change the result of an election, and that is not to be brought about by merely inferential or argumentative legislation, or as to what the Legislature must have intended. There must be a plain enactment declaring that the vote shall be rejected if tendered, or shall be struck off if given, to justify the disallowance of it, and as a consequence to double the penalty on the voter, and so seriously to affect the rights, privileges and interests of others dependent on the vote. (*Per* Richards, C. J., *In re Brockville Election*, 32 U. C. Q. B. 139.) Either taking or giving a bribe invalidates a vote on a scrutiny. (*Southampton Case*, 1 O'M. & H. 224.) A man who votes for one candidate after having received money to vote for another is as much guilty of bribery as if he had done what was expected of him. (*Lichfield Case*, *Ib.* 29.) To take pay for a day's wages is bribery. (*Staleybridge Case*, *Ib.* 66; see also *Taunton Case*, *Ib.* 183.) So payment of a debt for which the voter was incarcerated. (*Londonderry Case*, 21 L. T. N. S. 709; s. c. 1 O'M. & H. 275; see further, *Harding* v. *Stokes*, 1 M. & W. 354; *The Queen* v. *Thwaites*, 1 E. & B. 704.) The question is not what is the motive operating on the mind of the voter. The mind of the voter has nothing to do with it. The question is the motive of

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(6.) Every person who shall, after any such election, or the voting upon any such By-law, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted, or refrained from voting, or having induced any other person to vote or to refrain from voting at any such election, or upon any such By-law; (*o*) Receiving money, &c., after the election for voting, or inducing, &c., to vote.

(7.) Every person who shall hire any horses, teams, carriages or other vehicles, for the purpose of conveying electors to and from the polls, and every person who shall receive pay for the use of any horses, teams, carriages, or other vehicles, for the purpose of conveying electors to and from any polls as aforesaid. (*p*) 35 V. c. 36, s. 1. Hiring teams, &c.

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the person bribing. Probably there is no man who ever was bribed but would swear that the bribe had not influenced his vote. (*The Westminster Case*, 1 O'M. & H. 95; see also *The Cashel Case*, *Ib.* 289.) A conditional inducement of any kind to induce a voter to vote or refrain from voting is bribery. (See *Simpson* v. *Yeend*, L.R. 4 Q.B. 626.) Payment of travelling expenses to induce the voter to vote is bribery. (*Dublin Case*, 1 O'M. & H. 273.) It is not decided that payment afterwards, without a previous promise, is bribery. (1 *Northallerton Case*, *Ib.* 167.) Colourable employment of a voter is bribery. (*Penryn Case*, *Ib.* 128.) So lavish household expenditure if intended to influence votes. (*Hastings Case*, *Ib.* 218.) Admissions by a voter that he has been bribed are evidence to invalidate his vote on a scrutiny. (*Windsor Case*, *Ib.* 5; *King's Lynn Case*, *Ib.* 208.) Votes given for a candidate after an act of bribery has been committed by him, or on his behalf, are not null and void, but merely unavailable for the purpose of the election,—his status as a candidate being annihilated by the act of bribery. (*Norwich Case*, 19 L. T. N. S. 619.) The votes remain as good to be struck off by the party claiming the seat. (*Ib.*)

(*o*) The word corruptly, as used in the first sub-section, is not repeated here, but is involved in the language used. To receive, after an election, money or valuable consideration "on account of any person having voted or refrained from voting," &c., is to receive it corruptly. See note *h* to sub. 1 of this section.

(*p*) For a long time doubts existed as to whether the hiring of teams and vehicles to convey voters to and from the polls was legal or not. The doubts were removed in the case of Parliamentary elections for the Local Legislature by sec. 71 of 32 Vic. cap. 21. The subsection under consideration is in effect a transcript of that section. The subsection is in two parts. The first part affects the candidate and his agent; the second part affects the voters. To bring a case under the Act there must be a hiring on the part of the candidate or his agent, or receiving of pay for the use of horses, teams, carriages, or other vehicles for the purpose mentioned. One M., a carter, who voted for respondent at the request of P., the respondent's agent, carried a voter five or six miles to the polling place, saying that he would do so without charge. Some days after

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Persons using violence or intimidation to be guilty of undue influence.

**154.** Every person who shall directly or indirectly, by himself or by any other person on his behalf, make use of or threaten to make use of any force, violence, or restraint, or inflict, or threaten the infliction, by himself or by or through any other person, of any injury, damage or loss, or in any manner practise intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall in any way prevent or otherwise interfere with the free exercise of the franchise of any voter, shall be deemed to be guilty of undue influence, and be subject to the penalty hereinafter mentioned. (*q*) 35 V. c. 36, s. 2.

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the election P. gave M. $2, intending it as compensation for such carriage, but M. thought it was in payment for work which he had done for P. as a carter. The candidate knew nothing of the matter. *Held*, that there was not properly any payment by P. to M. for any purpose, the money having been given for one purpose and received for another. (*In re Brockville Election*, 32 U. C. Q. B. 132.) But even if there had been such a payment, it was made after P.'s agency had ceased, and as there was no previous hiring or promise to pay to which it could relate, it was held not to come under the operate of the statute. (*Ib.*) If such payment had been established it would have avoided P.'s vote but not M.'s. (*Ib.*) See further, the remarks of Richards, C.J., as to the hiring of cabs, &c., in the *West Toronto Case*, not yet reported. A candidate is under no obligation, legal or moral, to pay for loss of time of voters or their travelling expenses. (Per Baron Watson in *Cooper* v. *Slade*, 6 H. L. C. 764.) The payment of a voter's expenses in going to the poll is illegal as such, even though the payment may not have been intended as a bribe. (*South Grey Election*, 8 U. C. L. J. N. S. 17.) If made on condition of his voting it is bribery. (*Cooper* v. *Slade*, 6 H. L. C. 754.)

(*q*) Intimidation may be either general or particular. The great object of the Legislature is to secure freedom of election. "In order to avoid an election on the ground of intimidation, it must be shown that the rioting or violence was instigated by the member or his agents, for whom he is responsible; or it must be shown it was to such an extent as to prevent the election being an entirely free election." (*Staleybridge Case*, 1 O'M. & H. 72.) The common law renders an election carried by violence, force or intimidation void, because the freedom of election is violated, and persons are prevented from freely exercising their franchise and giving their votes. (*Cheltenham Case*, *Ib.* 64.) If the intimidation be so general that the election cannot be said to be a free one, in that case, though it is not brought home to the candidate or his agents, the election would be void. (*Stafford Case*, *Ib.* 229.) General intimidation must be put on a parallel with general bribery or general treating; that is, it must be shown to spread over to such an extent of ground, and to permeate through the community to such an extent, that the tribunal considering the case is satisfied that freedom of election has ceased to exist in consequence. (*Drogheda Case*, *Ib.* 259.) With

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**155.** The actual personal expenses of any candidate, his expenses for actual professional services performed, and *bona fide* payments for the fair cost of printing and advertising, shall be held to be the expenses lawfully incurred, and the payment thereof shall not be a contravention of this Act. (*r*) 35 V. c. 36, s. 3. Expenses of candidates.

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respect to particular voters, the Legislature has used language which makes it undue influence to practise intimidation, directly or indirectly, with intent to influence the vote of a single voter. Whether the voter be the person illtreated, or whether the illtreatment be violence, or damage done by the removal of custom or business, or employment, is immaterial, if it is done with a view to affect the voter or interfere with the free exercise of the franchise, is is within the prohibition of the Act. (*Blackburn Case, Ib.* 204.) The question whether a man made a free vote is something like the question whether a man made a free will. (*Windsor Case, Ib.* 6.) Threats of eviction by landlords (*The Queen* v. *Barnwell*, 5 W. R. 557). Threats to suspend or refuse the rites of the Church (*Galway Case*, 1 O'M. & H. 303; see also *Longford Case*, 2 O'M. & H. 16; *Tipperary Case, Ib.* 31), threats of dismissal from employment (*Westbury Case*, 1 O'M. & H. 50), discharge of servants (*Blackburn Case, Ib.* 203; *North Norfolk Case, Ib.* 241), or other wrongs or injuries of a similar character, if made in order to influence the vote, is undue influence. Where an injury has been actually inflicted the proof is comparatively easy, but where merely a threat has been made, and not executed, the point is often difficult to determine. (*North Norfolk Case, Ib.* 242.) If the threat be proved, the onus is upon those who made the threat or who are responsible for it, to show that intimidation did not produce its natural consequence, namely, terrifying the people from the exercise of their legitimate franchise. (*Drogheda Case, Ib.* 256.) A mere attempt to intimidate a voter, even though unsuccessful, would avoid an election. (*Northallerton Case, Ib.* 173.)

(*r*) The candidate is not restricted to purely personal expenses, but may (if there is no intent thereby to influence votes) hire rooms for committees and meetings, and employ men to distribute cards and placards, and perform similar services. (*East Toronto Case*, 8 U. C. L. J. N. S. 113.) A candidate in good faith intended that his election should be conducted in accordance both with the letter and spirit of the law, and himself paid no money except for printing. Money, however, was given by friends of the candidate to different persons for election purposes, who kept no accounts or vouchers of what they paid. The election, notwithstanding, was supported. (*Ib.*) In England candidates are required to pay money for election purposes through an authorized agent, and to render detailed accounts of the expenditure. (26 & 27 Vic. cap. 29, ss. 2, 3, 4.) Similar provisions now exist here as to Parliamentary elections. (See 36 Vic. cap. 2, ss. 8, 9, 10, 11, 12, Ont.) It is always more satisfactory, on an election inquiry to have the expenditure shown by proper vouchers. (See remarks of Chief Justice Richards on *The East Toronto Case*, 8 U. C. L. J. N. S. 119, and *The West Toronto Case*, not yet reported). Where all the accounts and records of an election are intentionally destroyed by the respondent's agent, even if the case be stripped of

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Evidence on application in nature of *quo warranto*.

**156.** Where, in an application in the nature of a *quo warranto*, any question is raised as to whether the candidate or any other voter has been guilty of any violation of sections one hundred and fifty-three or one hundred and fifty-four of this Act, affidavit evidence shall not be used to prove the offence, but it shall be proved by *viva voce* evidence taken before the Judge of any County Court, upon a reference to him by the Judge of the Superior Court for that purpose, or upon an appointment granted by him in cases pending in such County Court. (*s*) 35 V. c. 36, s. 5.

Penalty on candidates guilty of bribery, &c.

**157.** Any candidate elected at any Municipal election, who shall be found guilty by the Judge, (*t*) upon any trial upon a writ of *quo warranto*, of any act of bribery, or with using undue influence as aforesaid, shall forfeit his seat, and shall be rendered ineligible as a candidate at any Municipal election for two years thereafter. (*u*) 35 V. c. 36, s. 4.

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all other circumstances, the strongest conclusions will be drawn against the respondent, and every presumption will be made against the legality of the acts concealed by such conduct. (*South Grey Election Case, Ib.* 17.) Where a candidate puts money into the hands of an agent, and exercises no supervision over the way in which the agent is spending the money, but accredits and trusts him and leaves him the power of spending the money, there is such an agency established as to render the candidate liable to the fullest extent, not only for what the agent may do but also for what all the people that agent employs may do, although express instructions be given that none of the money should be improperly spent. (*Ib.*)

(*s*) The Judge whose duty it is to try an ordinary application in the nature of a *quo warranto*, may inquire into the facts either by affidavit or by oral testimony. (See sec. 141.) The exception created by this section is where "any question is *raised* as to whether the candidate or any other voter has been guilty of any violation of sections 153 or 154 of this Act;" in other words, been guilty of bribery or undue influence within the meaning of those sections. In such a case *viva voce* evidence alone can be used. The reason no doubt is that to charge the candidate or a voter under either of the sections mentioned, is to charge him with an offence which may be either a crime or in the nature of a crime, (see sec. 157), and that it would be contrary to all precedent to permit a person to be tried for a crime on what is called in this section "affidavit evidence."

(*t*) See note *s* to sec. 156.

(*u*) The consequences of being found guilty are twofold:

1. A forfeiture of the seat.

2. Personal incapacity, for two years thereafter, to be a candidate at a Municipal election.

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**158.** The vote of every person found guilty, upon any trial or inquiry as to the validity of the election or By-law of a violation of either of the one hundred and fifty-third or one hundred and fifty-fourth sections of this Act, shall be void. (*v*) 35 V. c 36, s. 7. Vote of persons found guilty of bribery, &c., to be void.

**159.** Any person who shall be adjudged guilty of any of the offences within the meaning of sections one hundred and fifty-three or one hundred and fifty-four of this Act, shall incur a penalty of twenty dollars, and shall be disqualified from voting at any municipal election or upon a By-law for the next succeeding two years. (*w*) 35 V. c. 36, s. 8. Additional penalties.

**160.** The penalties imposed by section one hundred and fifty-nine of this Act shall be recoverable, with full costs of suit, by any person who will sue for the same by action of debt in the Division Court having jurisdiction where the offence was committed; (*x*) and any person against whom Recovery of penalties.

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It is not said that these consequences shall follow if there be bribery or undue influence by an agent, without the knowledge or against the instructions of the candidate. It may be that in such a case the seat will be lost to the candidate. (See note *f* to sec. 153.) But it is clear that a man cannot be guilty by his agent of an illegal act, and be held personally responsible and be personally punished for that act, unless he has given the agent authority, express or implied, to do the illegal act. The law of agency has certainly, in such cases, been much extended by Committees of the House of Commons. But it is a clear proposition of law, that if a candidate employ an agent for a perfectly legal purpose, and that agent do an illegal act, that act does not affect the principal personally (although it may affect his seat), unless a great deal more be shown. It must be shown that the principal directed the agent to do the act, or really meant he should so act. No man who is an agent for a legal purpose can make his principal criminally responsible for an illegal act, unless the principal in some way authorized it. (See *per* Lord Wensleydale, in *Cooper* v. *Slade*, 6 H. L. C. 793.) Besides other penalties there may be a pecuniary penalty. (See sec. 159.)

(*v*) The consequence of bribery or undue influence may be so serious as to avoid the election—that is, when the actor is the candidate or a person for whose acts he is responsible. (See note *f* to sec. 153.) Or failing his own acting, or such authority to the person who acts, the vote of the actor shall be under this section void. (See note *n* to sec. 153.)

(*w*) These penalties, it is presumed, will not follow unless the illegal act be shown to be that of the party sought to be personally affected, or the act of some person who was authorized by him to do it. (See note *u* to sec. 157.) The next section makes provision for the recovery of the penalties.

(*x*) As the pecuniary penalty is only $20, it is believed that the Division Court would have had jurisdiction without this provision.

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judgment shall be rendered, shall be ineligible, either as a candidate or Municipal voter, until the amount which he has been condemned to pay shall be fully paid and satisfied. (*y*) 35 V. c. 36, s. 9.

Judge to make return.

**161.** It shall be the duty of the Judge who finds any candidate guilty of a contravention of sections one hundred and fifty-three or one hundred and fifty-four of this Act, or who condemns any person to pay any sum in the Division Court for any offence within the meaning of this Act, to report the same forthwith to the Clerk of the Municipality wherein the offence has been committed. (*a*) 35 V. c. 36, s. 10.

Clerk to keep book showing names of persons guilty of offences, &c.

**162.** The Clerk of every Municipality shall duly enter in a book, to be kept for that purpose, the names of all persons within his Municipality who shall have been adjudged guilty of any offence within the meaning of sections one hundred and fifty-three or one hundred and fifty-four of this Act, and of which he shall have been notified by the Judge who tried the case. (*b*) 35 V. c. 36, s. 11.

Attendance of witnesses.

**163.** Any witness shall be bound to attend before the Judge of the County Court upon being served with the order of such County Court Judge directing his attendance (*c*) and upon payment of the necessary fees for such

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(see *Medcalfe* v. *Widdifield*, 12 U. C. C. P. 411); but its enactment here, as the point is not entirely free from doubt (*O'Reilly q. t.* v. *Allan*, 11 U. C. Q. B. 526), was a proper precaution.

(*y*) The payment of the amount will not remove the disability where the payment is within two years of the conviction. (See sec. 159.) But the disability shall continue after the two years and until the judgment is satisfied.

(*a*) The object of this provision is to prevent the person disqualified being placed upon the voters' list. The Clerk, upon receipt of the report rendered necessary by this section, should enter the name in a book to be kept for that purpose, and erase the name from the list of voters of the Municipality. The former duty is imposed by the next section of this Act; the latter, it is apprehended, is an implied duty. So far as the Returning Officer at an election is concerned, the list is final. (See secs. 99 & 100.)

(*b*) It is presumed, for reasons given in the previous note, that the Clerk should also erase the name from the list of voters of the Municipality.

(*c*) The order should be intituled as of the proper Court and cause, and may be directed to the witnesses by name, and after reciting the power of the Judge to take evidence, might conclude as follows:

You and each of you are hereby required to attend before me at —— on the —— day of —— A. D., 187 , at the hour of ——

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attendance, (*d*) in the same manner as if he had been directed by a writ of *subpœna* so to attend, and he may be punished for contempt, and shall be liable to all the penalties for such non-attendance in the same manner as if he had been served with such *subpœna*. (*e*) 35 V. c. 36, s. 16.

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o'clock in the —— noon, to be examined as a witness in the matter of the said Petition (*or* aforesaid), and to attend the said Court until your examination shall have been completed.

As witness my hand.

(Signed)

Judge of the County Court.

This is in the form of order in general use under the English Act of 1868, for the trial of controverted elections. (Stat. Ont. 34 Vic. cap. 3, ss. 34 & 35.) Under the English Act, counsel applied for an order for the attendance of one J. M. He stated that the process server had used every effort to serve him with a subpœna but without effect, though there was reason to believe he was in the house. The application was granted. (*Waterford Case*, 2 O'M & H. 3.) Serjeant Ballantine, in one case in proof by a witness that T. W. was keeping out of the way to avoid being served with a subpœna, applied to the Court for an order for the attendance of his wife, who had not been subpœnaed. But the Judge (Martin, B.) said he had no power to grant such an order, unless the wife had been subpœnaed. (*Norwich Case*, 1 O'M. & H. 8.) Upon another witness (Mrs. H., who had been subpœnaed as a witness) being called and not answering, the same learned Judge is reported to have said, "I will make an order for her to come. If witnesses will not come, I will immediately make an order for them to come." (*Ib.*) In one case, where counsel for the respondent stated that he would require the attendance of a witness who had been previously called by the petitioners, the learned Judge (Fitzgerald, B.) said, "You had better write a letter to M., and he must be brought back at the respondent's expense." On the following day M. was called, but did not appear, and an order was granted for his attendance. (*Longford Case*, 2 O'M. & H. 12.) In a case tried before Mowat, V. C., at Prescott, where it was shown that one of the hands on a steamboat, then at the wharf in the town, was a material witness, an order was made for his attendance; and upon the captain of the boat refusing to allow him to be served or to give any information about him, an order was made for the attendance of the captain. (*South Grenville Case*, August, 1872, not reported.)

(*d*) When the witness, at the close of his examination, asked for his expenses, the Judge (Willes, J.) allowed him his expenses as he had been called by himself, but intimated that if any other witness desired to be paid his expenses, he should make the demand before he was sworn.

(*e*) *Quære*, should the process for contempt be issued by the Judge presiding at the trial, or from the office of the Court in which the petition has been filed? Unless the former, there would be great delay in enforcing the attendance of a witness ordered to attend.

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Witnesses not excused from answering on grounds of self-crimination or privilege.

**164.** No person shall be excused from answering any question put to him in any action, suit or other proceeding in any Court or before any Judge, touching or concerning any election, or By-law, or the conduct of any person thereat, or in relation thereto, on the ground of any privilege, or on the ground that the answer to such question will tend to criminate such person; (*f*) but no answer given by any person claiming to be excused on the ground of privilege, or on the ground that such answer will subject him to any penalty under this Act, shall be used in any proceeding under this Act against such person, (*g*) if the Judge shall give to the witness a certificate that he claimed the right to be excused on either of the grounds aforesaid, and made full and true answer, to the satisfaction of the Judge. (*h*) 35 V. c. 36, s. 17.

Proviso.

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(*f*) At common law, a witness is entitled to refuse to answer any question that may tend to criminate him, not only because the answer itself might be evidence against him on a criminal charge, but because it might furnish a link in the chain of testimony which might implicate him in such charge. (See *Keith* v. *Lynch et al*, 19 Grant, 497.) Those who decided the common law originally thought it was unwise and unjust to make a man, however guilty, criminate himself. The object of this section is to make an innovation, to a certain extent, on these principles of the common law. Election Committees, Judges and Election Commissioners must make their inquiries among persons who are generally expected to be hostile witnesses and unwilling to tell the truth, and who, if the common law were left untouched, would be always entitled to say, "I will answer no such question," and so the inquiry would be baffled. Therefore the Legislature, in the section here annotated, has enacted that the tendency of the answer to expose the witness to a criminal charge should not, contrary to the general rule, be any excuse for not answering the question. (See *per* Blackburn, J., in *The Queen* v. *Hulme*, L. R. 5 Q. B. 383, 384.)

(*g*) The Legislature, having taken away from the witness that common law immunity against criminating himself, here gives him an immunity on certain conditions. (*Ib.*)

(*h*) If the witness has really complied with the conditions he is entitled to a certificate, and the Judge has no right to refuse it. (*The Queen* v. *Price et al*, 22 L. T. N. S. 12.) The conditions are not only that he claimed the certificate, but "made full *and* true answer *to the satisfaction of the Judge*." The obligation intended to be thrown upon the person who is called as witness is, that he shall make full and true answer to the question put to him. If the evidence given be false there is no protection, and the witness is undoubtedly liable to be prosecuted for perjury. (See *The Queen* v. *Brittle*, L. R. 1 C. C. 248.) A certificate in the following form,—"We do hereby certify that J. H. Hulme was sworn and examined upon oath before us as such commissioners, and, upon such examination, was required by us to answer questions the answers to which

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Limitation of actions.

**165.** All proceedings other than an application in the nature of a *quo warranto* against any person for any violation of sections one hundred and fifty-three or one hundred and fifty-four of this Act, shall be commenced within four weeks after the Municipal election at which the offence is said to have been committed, or within four weeks after the day of voting upon any By-law as aforesaid. (*i*) 35 V. c. 36, s. 18.

Copies of Act to be mailed and posted up prior to election.

**166.** The Clerk of every Municipality shall, prior to any election, or voting on any By-law, furnish each Returning Officer with at least two copies of the sections of this Act, numbered from one hundred and fifty-three to one hundred and sixty-five inclusive, and shall also post at least six copies thereof in conspicuous places in each polling division in the Municipality. (*k*) *Vide* 35 V. c. 36, s. 19.

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tended to criminate him, and answered all such questions; but divers of the said answers to the said questions were unsatisfactory to us, and we believe were false, and false to the knowledge of him, the said J. H. Hulme,"—is no certificate such as is required by the Act, and is no protection. (*The Queen* v. *Hulme*, L. R. 5 Q. B. 386.) A witness who has received a pardon under the Great Seal is not privileged from answering questions the replies to which may criminate him, on the ground that actions for penalties, under the Corrupt Practices Prevention Act, are pending against him. (*The Queen* v. *Kinglake et al*, 22 L. T. N. S. 316.)

(*i*) The time limited for a proceeding in the nature of a *quo warranto* is "six weeks after the election," or "one month after the acceptance of office." (See sec. 132.) This section is intended to apply to proceedings "other than an application in the nature of a *quo warranto*" against any person for any violation of the sections mentioned. It is plain, therefore, that the mere fact of raising charges under the sections mentioned, in a *quo warranto* proceeding, is no ground for shortening the ordinary time allowed for such a proceeding. But where the proceeding intended is either an action for a penalty, or an information or indictment for the criminal offence, such proceeding must, in the case of an election, be taken "*within* four weeks after the Municipal election," or, in the case of voting on a By-law, "*within* four weeks after the day of voting." As to computation of time, see note *d* to sec. 128.

(*k*) The duty imposed on the Clerk is two-fold:

1. To furnish each Returning Officer with *at least* two copies of the sections mentioned.

2. To post *at least* six copies thereof in conspicuous places in *each* polling division in the Municipality.

The object is to bring home to the electors a knowledge of the highly penal character of the sections as to bribery and undue influence, in the hope that such knowledge will deter them from committing any such offence. The section, it is presumed, is directory. (See note *n* to sec. 26 of the Assessment Act; see also note *h* to sec. 189 of this Act.)

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# PART IV.

## OF MEETINGS OF MUNICIPAL COUNCILS.

DIVISION I.—WHEN AND WHERE HELD.
DIVISION II.—CONDUCT OF BUSINESS.

### DIVISION I.—WHEN AND WHERE HELD.

*First and Subsequent Meetings. Sec. 167–171.*
*Payment of Members for Attendance. Sec. 172, 173.*

First meetings of councils.

**167.** The members of every Municipal Council (except County Councils) shall hold their first meeting at eleven o'clock in the forenoon, (*l*) on the third Monday of the same January in which they are elected, or on some day thereafter; (*m*) and the members of every County Council shall hold their first meeting at two o'clock in the afternoon, or some hour thereafter, (*n*) on the fourth Tuesday of the same month, or on some day thereafter. (*o*) *Vide* 29-30 V. c. 51, s. 133.

Place of first meeting.

**168.** The members of every County Council shall hold their first meeting at the County Hall, if there is one, or

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(*l*) An objection, that an election took place at six o'clock instead of at noon on the day appointed for the election, was held to be "too trivial to require serious notice." (*The Queen ex rel. Heenan* v. *Murray*, 1 U. C. L. J. N. S. 104.)

(*m*) The members of the Council are bound to know the day specially named for the first meeting. But if the meeting be held on a subsequent day, it would appear to be only reasonable, in order to prevent surprise, that notice should be given of the subsequent day. (*The King* v. *Liverpool*, 2 Burr. 731; *The King* v. *Doncaster*, *Ib.* 743; *The King* v. *Theodorick*, 8 East. 543; *The King* v. *May et al*, 5 Burr. 2682; *The King* v. *Grimes*, *Ib.* 2601; *Musgrave* v. *Nevinson*, 1 Str. 584; *Kynaston* v. *Shrewsbury*, 2 Str. 1051; *The King* v. *Hill*, 4 B. & C. 441; *Smyth* v. *Darley*, 2 H. L. C. 789; see further, *The King* v. *Faversham*, 8 T. R. 352; *The King* v. *Langhorn*, 4 A. & E. 538.) Where two members of a Village Council, being a minority of the whole number when full, met, but, in the absence of the three remaining members, were unable to proceed to business; and on a subsequent day the three remaining members, without notice to the two members, met and elected one of themselves to be Reeve, the election, in the absence of proof of want of *bona fides*, was maintained. (*The Queen ex rel. Hyde* v. *Burnhart*, 7 U. C. L. J. 126.)

(*n*) See note *l* above.

(*o*) See note *m* above.

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otherwise at the County Court-house, (*p*) 20-30 V. c. 51, s. 134.

Place of subsequent meetings of county council, &c.

**169.** The subsequent meetings of the County Council, and all the meetings of every other Council, shall be held at such place, either within or without the Municipality, as the Council from time to time, by resolution on adjourning, to be entered on the minutes, or by By-law, appoints. (*q*) 29-30 V. c. 51, s. 138.

Place of meeting may be in cities, &c.

**170.** The Council of any County or Township in which any City, Township, or Incorporated Village lies, may hold its sittings, keep its public offices, and transact all the business of the Council and of its officers and servants, within such City, Town, or Incorporated Village, (*r*) and may purchase and hold such real property therein as may be convenient for such purposes. (*s*) 29-30 V. c. 51, s. 139.

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(*p*) The object of stating *place* as well as *time* of the first meeting is to prevent surprise. (See note *m* to sec. 167.) Subsequent meetings, as to time and place, may be regulated by adjournments. (See sec. 169.)

(*q*) The object of this section would seem to be to enable a County Council to sit in a City or Town that has been separated from the County, when the proper County buildings are situate therein and are owned by the County. (See secs. 168 & 170.) But the language, "every *other* Council," is broad enough to admit of any Municipal Council holding sittings elsewhere than within the Municipality. The section has not yet been judicially interpreted. The meetings are to be held "at such place," &c., as the Council, from time to time, by *resolution* on adjourning, to be entered on the minutes, or by *By-law*, appoints. It is apprehended that an established place of meeting would be by By-law, and that, in the absence of any such By-law, the place may be determined for the next meeting by resolution on adjourning, at which time there would be no opportunity of passing a By-law. In the absence of any By-law, &c., the next meeting would be understood as appointed to be held at the place of the last meeting. (Sec. 171.) Strictly speaking, there ought to be either a By-law fixing a permanent place, or a resolution from time to time entered at each adjournment. (See *In re Paffard and Lincoln*, 24 U. C. Q. B. 16.)

(*r*) See note *q* to sec. 169.

(*s*) The Statutes of Mortmain are held to be in force in Ontario. (*Doe Anderson* v. *Todd et al*, 2 U. C. Q. B. 82; see also *Doe dem. Vancott* v. *Read*, 3 U. C. Q. B. 244; *Hallock et al* v. *Wilson*, 7 U. C. C. P. 28; *Mercer* v. *Hewston et al*, 9 U. C. C. P. 349. But see *Whicker* v. *Hume et al*, 7 H. L. C. 124.) And this being so, the power can only properly be exercised in the limited manner in which it is conferred, *i. e.*, to purchase and hold such real property as may be *convenient for the purposes mentioned*. (See *Ketchum et al* v. *Buffalo et al*, 14 N. Y. 356; *State* v. *Mansfield*, 3 Zab. (N. J.) 510: *Nicoll* v.

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Special meetings may be either open or closed.

**171.** In case there may be no By-law of a Council fixing the place of meeting, any special meeting of the Council shall be held at the place where the then last meeting of the Council was held, (*t*) and a special meeting may be open or closed, as in the opinion of the Council expressed by resolution in writing, the public interest requires. (*u*) 29-30 V. c. 51, s. 141.

Remuneration to councillors and committeemen limited.

**172.** The Council of every Township and County may pass By-laws for paying the members of the Council for their attendance in Council, or any member while attending on Committee of the Council, at a rate not exceeding two dollars *per diem*, and five cents per mile necessarily travelled (to and from) for such attendance. (*v*) *Vide* 29-30 V. c. 51, s. 271. 31 V. c. 30, s. 26.

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*New York & Erie R.R.Co.*, 12 N.Y. (2 Kern.) 121; *McCartee* v. *Orphan Asylum Society*, 9 Cow. 437; *Reynolds* v. *Commissioners, &c.*, 5 Ohio, 204; *Paige* v. *Heinburg*, 40 Vt. 81; *Davison College* v. *Chambers*, 3 Jones, Eq. (N. C.) 253; *Louisville* v. *Commonwealth*, 1 Duvall, (Ky.) 295; *State ex rel. Dean* v. *Madison*, 7 Wis. 688.) But the right to hold is not one that can ordinarily arise as between vendor and vendee. (See *Becher* v. *Woods*, 16 U. C. C. P. 29; *Belleville* v. *Judd*, *Ib.* 397; *Orford* v. *Bailey*, 12 Grant, 276; see also *Goundie* v. *Northampton Water Company*, 7 Pa. St. 233; *Chambers* v. *St. Louis*, 29 Mob. 543; *Leazure* v. *Hillegas*, 7 Serg. & Rawl. 313. But see also *Bank of Michigan* v. *Niles*, 1 Doug. (Mich.) 401; *The Banks* v. *Pontiaux*, 3 Rand. (Va.) 136; *Martin* v. *Bank*, 15 Ala. 587; *Baird* v. *Bank of Washington*, 11 Serg. & Rawl. 411; *Worcester* v. *Eaton*, 13 Mass. 371. See further, notes *a*, *b* and *c* to sec. 372.)

(*t*) See note *p* to sec. 168.

(*u*) The line is here drawn between open and closed meetings. The former is the rule (sec. 174), the latter the exception, and to exist whenever, in the opinion of the Council expressed by resolution in writing, the public interest requires it.

(*v*) The Council is not to be confounded with the Corporation. It is the governing body acting on behalf of the Corporation for the particular year. It is, moreover, a fluctuating body; the Council for one year not being identical with the Council for another year, and not to be so looked upon even though it should happen to be composed of the same persons (*per* Robinson, C. J., in *East Nissouri* v. *Horseman*, 16 U. C. Q. B. 583.) The members of the Council are not the Corporation, but the agents of the Corporation for the affairs and funds of the Corporation. When these agents are proved so to misappropriate the funds of the Corporation as to put the money into their own pockets when not authorized so to do, a bill in Equity at the instance of a ratepayer (*Blakie* v. *Staples et al*, 13 Grant, 67), or an action at the suit of the Corporation will lie against them to recover it back, and when that misappropriation is mixed up with what may have been rightfully paid, it is but right, in order to operate as a safeguard to the Corporation, to cast the

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**173.** The Mayor or other head of any City, Town or Incorporated Village may be paid such annual sum or other remuneration as the Council of the Municipality may determine. (*w*) Remuneration of mayor, &c.

DIVISION II.—CONDUCT OF BUSINESS.

*Meetings to be open to Public. Sec. 174.*
*Quorum, how many. Sec. 176, 177.*
*Who to preside. Sec. 178–181.*
*Presiding Officer may vote. Sec. 182.*
*Power to adjourn. Sec. 183.*

**174.** Every Council shall hold its ordinary meetings openly, and no person shall be excluded except for improper Ordinary meetings to be open.

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burthen of proof on the agent, to separate from the appropriation he has received that portion which he would be legally entitled to take (*per* Burns, J., in *East Nissouri* v. *Horseman*, 16 U. C. Q. B. 588); and it would be well for those who take part in the illegal appropriation of public moneys, to reflect that there is not only a civil but a criminal remedy (*per* Robinson, C. J., in *Daniels* v. *Burford*, 10 U. C. Q. B. 481.) The Treasurer should not pay money on any or every draft and order which the Reeve for the time being may direct him to pay. The Township moneys will probably be considered as still in his hands, unless paid out on a proper legal authority, for purposes contemplated and authorized by law, at least until he has received a formal acquittance and discharge from the Municipality. (*East Nissouri* v. *Horseman et al*, 9 U. C. C. P. 191, *per* Draper, C. J.) Nor should he pay money on an illegal order or resolution, for an Act of Parliament should be regarded by him as a higher authority than the resolution or By-law of a Corporation created by Act of Parliament (*per* Robinson, C. J., in *Daniels* v. *Burford*, 10 U. C. Q. B. 481); and if a Treasurer so pay money on an illegal order or resolution, he would be probably subject to criminal prosecution (*per* Robinson, C. J., in *East Nissouri* v. *Horseman*, 16 U. C. Q. B. 580), but not now liable to any action at law for moneys paid by him in accordance with a By-law or resolution of the Council. (Sec. 196.) It was, under the old statutes, held that, under power to remunerate Municipal officers, the members of the Council had no power to remunerate themselves. (See note *r* to sec. 219.)

(*w*) The office of Mayor is in many cases a very onerous and responsible position, and one which subjects the incumbent to many obvious and unavoidable expenses. (See note *t* to sec. 185.) It is only proper, therefore, that some provision should be made for the remuneration of a person holding such a position. Before this Act, there was no power to make such a provision. (See note *r* to sec. 219.) The power now conferred on the Council is to determine "such annual sum or other remuneration" as the Council sees fit. The grant should not be made in the shape of a gratuity for services rendered in several years previous to the making of it. (See *In re McLean and Cornwall*, 31 U. C. Q. B. 314.) The determination should, it is apprehended, be made by By-law, and made to take effect only for the future. (*Ib.*)



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conduct; but the head or other Chairman of the Council may expel and exclude from any meeting, any person who has been guilty of improper conduct at such meeting. (*a*) *Vide* 29-30 V. c. 51, s. 140.

No business before declarations of office, &c.

**175.** No business shall be proceeded with at the first meeting of the Council until the declarations of office and qualification have been administered to all the members who present themselves to take the same. (*b*) *Vide* 29-30 V. c. 51, s. 118.

Quorum.

**176.** A majority of the whole number of members required by law to constitute the Council shall be necessary to form a quorum. (*c*) 29-30 V. c. 51, s. 142.

In councils of five, three must concur.

**177.** When a Council consists of only five members, the concurrent votes of at least three shall be necessary to carry any resolution or other measure. (*d*) 29-30 V. c. 51, s. 143.

The heads preside in council.

**178.** The head of every Council shall preside at the meetings of Council, (*e*) and may at any time summon a special meeting thereof, and it shall be his duty to summon

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(*a*) It is one of the essential qualities of a Court of Justice, that its proceedings be public, and all parties who may be desirous of hearing what is going on, if there be room in the place for that purpose, provided they do not interrupt the proceedings, and provided there be no other kind of improper conduct, have a right to be present and hear what is going on. (*Per* Bayley, J., in *Dubney* v. *Cooper*, 10 B. & C. 240.) This rule is to its fullest extent to be applied to ordinary meetings of every Municipal Council. But a special meeting may be open or closed, as, in the opinion of the Council, expressed by resolution in writing, the public interest requires. (Sec. 171.)

(*b*) It is apprehended that before appointing a presiding officer, when necessary to do so, the members ought to take the necessary declarations. Such an election would, it is believed, be deemed "business" within the meaning of this section. The members of a Council, "after making the declarations of office and qualification when required to be taken," organize themselves as a Council by electing a Warden. (See notes to sec. 120.)

(*c*) If the Council consist of twelve members, there must be six present to constitute a quorum. (See note *g* to sec. 120.) Acts done with less than a quorum are in general void. (*Ib.*) The presumption is in favour of a quorum at the doing of a corporate act. (*Ib.*)

(*d*) See note *g* to sec. 120.

(*e*) It is not only the duty but the right of the head of the Council to preside at its meetings. In the event of the right being denied, legal proceedings may be instituted to enforce it. (See *The King* v. *Williams*, 1 Burr. 402; *Cochran* v. *McCleary*, 22 Iowa, 75; *Reynolds*

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a special meeting whenever requested in writing by a majority of the members of the Council. (*f*) 29-30 V. c. 51, s. 145.

When reeve or deputy reeve to preside.

**179.** In case of the death or absence of the head of a Town Council, the Reeve, and in case of the absence or death of both of them, the Deputy Reeve, and in case of the death or absence of the head of a Village or Township Council, the Deputy Reeve shall preside at the meetings of the Council, and may at any time summon a special meeting thereof; (*h*) but if there be more than one Deputy Reeve, the Council shall determine which of them shall preside at their meeting. (*i*) 29-30 V. c. 51, s. 146.

Absence of head, &c., provided for.

**180.** In the absence of the head of the Council, and in the case of a Town, Village or Township, in the absence also of the Reeve, if there be one, and also of the Deputy Reeve or Deputy Reeves, if there be one or more, by leave of the Council, or from illness, the Council may, from among

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v. *Baldwin*, 1 La. An. 162; *Commonwealth* v. *Arrison*, 15 Serg. & Rawle, 130.) But the question cannot in general be determined as a collateral inquiry in an existing suit. (*Tappan* v. *Gray*, 7 Hill (N. H.) 259; *Markle* v. *Wright*, 13 Ind. 548; *Hullman* v. *Honcomp*, 5 Ohio, 237; *People* v. *Cook*, 4 Seld. 67; *Indiana Mutual Fire Insurance Co.* v. *Conner*, 5 Ind. 171; *Moseley* v. *Alston*, 1 Phill. 790; *Hagner* v. *Heyberger*, 7 Watts & Serg. 104; *People* v. *Carpenter*, 24 N. Y. 86; *Attorney-General* v. *Utica Insurance Co.*, 2 Johns. Ch. 371; *People ex rel. Wood* v. *Draper et al*, 15 N. Y. 532; *People* v. *Utica Insurance Co.*, 15 Johns. 358; *Commonwealth* v. *Bank*, 28 Pa. 389, *Ib.* 379; *Hughes* v. *Parker*, 20 N. H. 58; *Ex parte Strahl*, 16 Iowa, 369; *Facey* v. *Fuller*, 13 Mich. 527; *Updegraff* v. *Crans*, 47 Pa. St. 103; *Kerr* v. *Trego*, *Ib.* 292.)

(*f*) It is in his discretion at any time to summon a special meeting; but when requested in writing to do so by a majority of the members of the Council, it is obligatory upon him to do as requested. All the members entitled to be present at a special meeting should be notified to attend, and, if practicable, notified also of the purpose for which the meeting is called. (*Smyth* v. *Darley*, 2 H. L. C. 789; see also *Ex parte Rogers*, 7 Cow. 526; *People* v. *Batchelor*, 22 N. Y. 128; *Downing* v. *Rugar*, 21 Wend. 178; *Burgess* v. *Pue*, 2 Gill (Md.) 254; *Stow* v. *Wise*, 7 Conn. 214.) The omission to notify a member entitled to be present may be held to invalidate all proceedings at such meeting (*Ib.*), and where the purpose is specified in the notice, there is in general no power to transact business beside such purpose. (*The King* v. *Liverpool*, 2 Burr. 735; *The King* v. *Carlisle*, 1 Str. 385; *Machell* v. *Nevinson*, 2 Ld. Rayd. 1355; *Bergen* v. *Clarkson*, 1 Halst. N. J. 352; see further, note *m* to sec. 167.)

(*h*) See notes *e* and *f* to the preceding section.

(*i*) See note *b* to sec. 175.

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the members thereof, appoint a presiding officer, who, during such absence, shall have all the powers of the head of the Council. (*k*) 29-30 V. c. 51, s. 147.

Casual absence provided for.

**181.** If the person who ought to preside at any meeting (*l*) does not attend within fifteen minutes after the hour appointed, the members present may appoint a Chairman from amongst themselves, and such Chairman shall have the same authority in presiding at the meeting as the absent person would have had if present. (*m*) 29-30 V. c. 51. s. 148.

Head to vote. Question deemed negatived in case of equality of vote.

**182.** The head of the Council, or the presiding officer or Chairman of any meeting of any Council, may vote with the other members on all questions, (*n*) and any question on which there is an equality of votes shall be deemed to be negatived. (*o*) 29-30 V. c. 51, s. 149.

Adjournment.

**183.** Every Council may adjourn its meetings from time to time. (*p*) 29-30 V. c. 51, s. 144.

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(*k*) If any of the officers mentioned in the preceding section happen to be present at a meeting, each such officer is, according to the order mentioned, entitled to preside and bound to do so. But if none of the officers named be present, a presiding officer may be elected from among the members to act during the absence of the officer named. Should either of these officers appear, it would be his right to preside.

(*l*) This may mean the head of the Council, or, in his absence, one of the officers named in section 179.

(*m*) This part of the section is silent as to the duration of the authority. But it is apprehended that the authority would cease on the presence of the officer "who ought to preside." (See note *k* to sec. 180.)

(*n*) The general import of the words used deserves attention. Apparently no question can come before the Council or meeting, on which the presiding officer or Chairman is disentitled to vote. There is no exception of any kind in the enactment. The right to vote is given "on *all* questions." Its exercise on any particular question, perhaps affecting the conduct of the presiding officer or Chairman himself, is a matter left entirely in his own discretion.

(*o*) An exception to this rule, recognized in the Act, is that which allows a casting vote in the election of the head of a Council. (See sec. 122.) Another is where united Counties make provision for improvements in one of the Counties separately. (Sec. 398.)

(*p*) Adjourned meetings are generally held for the purpose of completing the unfinished business of a preceding meeting. It is allowable, therefore, in the case of an ordinary adjournment, to transact any business that might have been lawfully transacted at the preceding meeting, but which was not transacted for want of time or opportunity to do so. (See *The King* v. *Harris*, 1 B. & Ad.

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# PART V.

## OFFICERS OF MUNICIPAL CORPORATIONS.

DIVISION I.—THE HEADS.
DIVISION II.—THE CLERK.
DIVISION III.—THE TREASURER.
DIVISION IV.—ASSESSORS AND COLLECTORS.
DIVISION V.—AUDITORS AND AUDIT.
DIVISION VI.—VALUATORS.
DIVISION VII.—DUTIES OF, RESPECTING OATHS AND DECLARATIONS.
DIVISION VIII.—SALARIES AND TENURE OF OFFICE.

### DIVISION I.—THE HEADS.

Who to be head of council.

**184.** The Head of every County and Provisional Corporation shall be the Warden thereof, and of every City and

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936; *Scadding* v. *Lorant*, 3 H. L. C. 418; *Smith* v. *Law*, 21 N. Y. 296; *Warner* v. *Mower et al*, 11 Vt. 385; *People ex rel. Loew* v. *Batchelor*, 22 N. Y. 128; *People* v. *Martin*, 1 Seld. (N. Y.) 22; *Hudson Co.* v. *State*, 4 Zabr. 718; *In re Robin Street*, 1 La. An. 412.)

In the midst of a Parliamentary debate upon a question, any member may move "that this house do *now* adjourn," not by way of amendment to the original question, but as a distinct question which interrupts and supersedes that already under consideration. If this second question be resolved in the affirmative, the original question is superseded; the House must immediately adjourn, and all business for that day is at an end. (May on the Law and Practice of Parliament, 6 Ed. 261.) The motion for adjournment, in order to supersede a question, must be simply that the House do *now* adjourn. It is not allowable to move that the House do adjourn to any future time specified, nor to move an amendment to that effect to the question of adjournment. (*Ib.*) The House may also be suddenly adjourned by notice being taken that the necessary number of members to constitute a majority are not present; and an adjournment caused in that manner has the effect of superseding a question in the same way as a formal question to adjourn when put and carried. In either case the original question is so entirely superseded, that if it has not yet been proposed to the House by the Speaker, it is not even entered in the votes, as the House was not fully in possession of the question before adjournment. If a motion to adjourn be negatived, it may not be proposed again without some intermediate proceeding; and in order to avoid any infringement of this rule, it is a common practice for those who desire to avoid a decision upon the original question on that day, to move alternately that "this House do now adjourn," and "that the debate be now adjourned." The latter motion, if carried, merely defers the decision of the House, while the former, as already explained, altogether supersedes the question. Yet members who only desire to enforce the continuance of the debate on another day, often vote for an adjournment of the House, which, if carried, would supersede the question they are prepared to support. This distinction should always be borne in mind, lest a

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Town the Mayor thereof, and of every Township and Incorporated Village the Reeve thereof. (*r*) 29-30 V. c. 51, s. 65.

Duties of head of council.

**185.** The Head of the Council is the chief executive officer of the Corporation; (*s*) and it shall be his duty to be vigilant and active at all times in causing the law for the government of the Municipality to be duly executed and put in force; to inspect the conduct of all subordinate officers in the government thereof, and, as far as may be in his power, to cause all negligence, carelessness and positive violation of duty to be duly prosecuted and punished, and

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result should follow that is widely different from that anticipated. Suppose a question to be opposed by a majority, and that the minority are anxious for an adjournment of the debate; but that on the failure of a question proposed by them to that effect, they vote for an adjournment of the House; the majority have only to vote with them and carry the adjournment, when the obnoxious question is disposed of at once, and its supporters have themselves contributed to its defeat. (*Ib.*)

(*r*) It is said that at common law Corporations have power to appoint such officers as the nature of their constitution requires. (*Vintner's Co.* v. *Passey*, 1 Burr. 237; *Hastings Case*, 1 Mod. 23; *The King* v. *Barnard*, Comb. 416.) But by this Act provision is made for the appointment of the principal officers of a Municipal Corporation, and so the implied power, if it exist at all, should be sparingly exercised. (See *Hoboken* v. *Harrison*, 1 Vroom. (N. J.) 73; *White* v. *Tallman*, 2 Dutch. (N. J.) 67; see also *People* v. *Bedell*, 2 Hill, (N. Y.) 196; *Field* v. *Girard College*, 54 Pa. St. 233.) Though the provisions as to Heads of Councils are here grouped under the title "Officers of Municipal Corporations," there are obvious differences between such officers and subordinate officers. (See *In re McLean* v. *Cornwall*, 31 U. C. Q. B. 314.)

(*s*) Experience has demonstrated the necessity of more power and more responsibility in the Executive Head of our Municipal Institutions. Too often the duties of the Mayor or the Chief Executive Officer are only nominal, and to these he gives but little attention—a natural result of his want of importance and of his inability to control the administration of Municipal affairs. If the office be clothed with dignity and real authority; if the Mayor shall be invested with the veto power; if he shall have the sole right to appoint and the unrestricted power to suspend or remove subordinate officials or heads of departments;—then the citizens can justly demand of him that he shall be individually responsible for the proper conduct of the concerns of the Municipality, and if grievances exist they will know to whom to apply for remedy, and on whom to fix the blame. (*Per* Judge Dillon, in Dillon's Municipal Corporations, p. 23.) The Editor has copied the foregoing because, to a very great extent, he concurs in the views expressed by the learned Judge. Mayors of our Cities and Towns have responsibility without power, and the result is a lax administration of Municipal affairs, too often combining inefficiency with extravagance and waste.

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to communicate, from time to time, to the Council all such information, and recommend such measures within the powers of the Council, as may tend to the improvement of the finances, health, security, cleanliness, comfort and ornament of the Municipality. (*t*) *Vide* 29-30 V. c. 51, s. 123.

DIVISION II.—THE CLERK.

*Appointment and Duties of. Sec. 186, 187.*
*Records and Papers may be Inspected. Sec. 188.*
*Return of Statistics to Government. Sec. 189–193.*
*On default, Moneys retained. Sec. 194.*

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(*t*) Much of the happiness of the inhabitants of a City or Town depends upon the prudent management of the finances, the existence of an efficient police force, the preservation of health, the proper repair of roads, and the ornamentation of the Municipality. The inhabitants of all Municipalities have, more or less, these wants in common. By-laws to secure these objects are generally passed but seldom enforced; the consequence is, the reverse of all that is desirable in Municipal government. It is by this section made the duty of Heads of Councils to be *vigilant* and *active* in the performance of just such duties as above suggested. The duties in detail may be stated as follows:—

1. To be vigilant and active at all times in causing the law for the government of the City or Town to be duly executed and put in force.
2. To inspect the conduct of all subordinate officers in the government thereof.
3. To cause, as far as may be in his power, all negligence, carelessness and positive violation of duty to be duly prosecuted and punished.
4. To communicate from time to time to the Council all such information and recommend such means as may tend to the improvement of the finances, the police, health, security, cleanliness, comfort and ornament of the Municipality.

These are all executive duties: other duties, not necessary to be here particularized, are sometimes cast upon Heads of Corporations. (See *Ela* v. *Smith et al*, 5 Gray, 121; *Henderson* v. *Mayor*, 3 La. 563; *Shafer et al* v. *Mumma*, 17 Md. 331; *Slater* v. *Wood*, 9 Bosw. 15; *Pedrick* v. *Bakley et al*, 12 Gray, 161; *Nichols* v *Boston*, 98 Mass. 39; *Waldo* v. *Wallace*, 12 Ind, 569; *Gulick* v. *New*, 14 *Ib.* 93; *Muscatine* v. *Steck*, 7 Iowa, 505; *Ex parte Strahl*, 16 Iowa, 369; *Morrison* v. *McDonald et al*, 21 Maine, 550; *State ex rel. Rockford* v. *Maynard*, 14 Ill. 419; *Commonwealth* v. *Dallas*, 3 Yeates (Pa.), 300; *State* v. *Wilmington*, 3 Harrington (Del.) 294.) It is now for the first time expressly enacted in the history of Municipal legislation in this country, that the Head of the Council of a City, Town or Village may be paid such annual or other remuneration as the Council may determine. (See sec. 173). The Mayor of a City or Town is *ex officio* a Justice of the Peace (sec. 306), and, where there is no Police Magistrate, has jurisdiction to hear and determine prosecutions for offences against By-laws (sec. 309), and, under particular circumstances, is authorized to call out the *posse comitatus* to enforce the law within the Municipality, should exigencies require it. (Sec. 371.)

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The clerk, and his duties.

**186.** Every Council shall appoint a Clerk; (*a*) and the Clerk shall truly record in a book, without note or comment, all resolutions, decisions and other proceedings of the Council, and, if required by any member present, shall record the name and vote of every member voting on any matter submitted, and shall keep the books, records and accounts of the Council; and shall preserve and file all accounts acted upon by the Council, and also the originals or certified copies of all By-laws, and of all minutes of the proceedings of the Council, all which he shall so keep in his office, or in the place appointed by By-law of the Council. (*b*) 29-30 V. c. 51, s. 152.

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(*a*) It is made the duty of the Council to appoint a Clerk. Convenience, if not duty, however, will at all times render one necessary. (*Beverley* v. *Barlow*, 7 U. C. L. J. 117.) *Quære*, are the offices of Clerk and Treasurer so incompatible as to make it illegal for the same person to hold both offices? (See note *n* to sec. 124.) In the Eng. Stat. 34, Wm. IV. cap. 101, s. 18, there is an express prohibition against appointing the same person to both such offices. (See *Hawkings* v. *Newman*, 4 M. & W. 613.)

(*b*) The Clerk being an executive officer of the Council, it is his duty to make all entries as directed. He is not at liberty, without the previous sanction of the Council, to exercise any discretion of his own. His record of the proceedings is to be "true" and "without note or comment."

The duties of the Clerk, here enumerated, are the following:

1. To record all resolutions, decisions and other proceedings of the Council.

2. To record the name and vote of every member voting, if required by any member present.

3. To keep the books, records and accounts of the Council.

4. To preserve and file all accounts acted upon by the Council.

5. To keep the original or certified copies of all By-laws, and of all minutes and proceedings of the Council.

All which he is to keep in his office, or the place appointed by By-law of the Council.

Other duties are imposed by succeeding sections of this Act.

The Clerk, while in office, may amend an erroneous record. (*Scammon* v. *Scammon*, 8 Fost. 429; *Cass* v. *Bellows*, 11 Fost. (N. H.) 501; *Harris* v. *School District*, 8 Fost. 58; *Gibson* v. *Bailey*, 9 N. H. 168; *Whittier* v. *Varney*, 10 N. H. 291; *Welles* v. *Battelle*, 11 Mass. 477; *Low* v. *Pettingill*, 12 N. H. 337; *Pierce* v. *Richardson*, 37 N. H. 306; *President* v. *O'Malley*, 18 Ill. 407; *Mott* v. *Reynolds*, 27 Vt. (1 Wms.) 206; *Covington* v. *Ludlow*, 1 Met. (Ky.) 295; *Boston Turnpike Company* v. *Pomfret*, 20 Conn. 590; *Bishop* v. *Cone et al*, 3 N. H. 513; *Hoag* v. *Durfey*, 1 Aiken (Vt.), 286; *Chamberlain* v. *Dover*, 13 Maine, 466.) The power to amend ceases when he ceases to hold the office. (*School District* v. *Atherton*, 12 Met. 105; *Hartwell* v. *Littleton*, 13 Pick. 229.) His successor cannot make an amendment. (*Taylor* v.

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**187.** The Council may by resolution provide that, in case the Clerk is absent, or incapable, through illness, to perform his duties of Clerk, that some other person to be named in such resolution, or to be appointed under the hand and seal of such Clerk, shall act in his stead, and the person so appointed shall, while he so acts, have all the powers of the Clerk. (*c*) *New.*

Provision for absence, &c., of clerk.

**188.** Any person may inspect any of the particulars aforesaid, (*d*) as well as the Assessment Rolls, voters' lists, poll books, and other documents in the possession of or under the control of the Clerk, (*e*) at all seasonable times; (*f*) and the Clerk shall, within a reasonable time, furnish copies thereof to any applicant at the rate of ten cents per hundred words, or at such lower rates as the Council appoints, and shall, on payment of his fee therefor, furnish, within a reasonable time, to any elector of the Municipality, or to any other person interested in any By law, order or resolution, or to his attorney, a copy of such By-law, order or

Minutes, &c., to be open to inspection.

Copies to be furnished, and charges therefor, &c.

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*Henry*, 2 Pick. 397; *State* v. *Williams*, 25 Maine, 561, 565; *Fossett* v. *Bearce*, 29 Maine, 523.) But in a proper case the Council might direct the amendment to be made. (*Hutchinson* v. *Pratt*, 11 Vt. 402.) Where an amendment is made, and it should not be attempted unless absolutely necessary, it should be made with the sanction of some superior officer or of the Council, and in such a manner as to be easily distinguished from the original text. (See *Pierce* v. *Richardson*, 37 N. H. 306.)

(*c*) The Council has an implied power, in case of the temporary absence of the Clerk, to appoint a person to discharge his duties. (See *The King* v. *Mothersell*, 1 Str. 93; *Hutchinson* v. *Pratt*, 11 Vt. 402.) But still the provision contained in this section is proper in not leaving to inference a power that, under certain circumstances, must undoubtedly be used.

(*d*) See note *c* to sec. 187.

(*e*) These words as to the Assessment Rolls, voters' lists, &c., were added to the Act of 1866 by 34 Vic. cap. 30, s. 18. In other respects the section is a re-enactment of sec. 153 of the Act of 1866.

(*f*) It is the right of any inhabitant of the Municipality to inspect the records, books, and other documents of the Corporation on proper occasions (*The King* v. *Shelley*, 3 T. R. 142; *The King* v. *Babb*, *Ib.* 579; *Harrison* v. *Williams*, 3 B. & C. 162; *Rogers* v. *Jones*, 5 D. & R. 484); and it is a right which may be enforced by mandamus. (*The King* v. *Newcastle*, 2 Str. 1223; *The King* v. *Lucas*, 10 East. 235; *The King* v. *Purnell*, 1 Wils. 242; *The King* v. *Bridgeman*, 2 Str. 1203: *People* v. *Mott*, 1 How. Prac. R. 247; *Cockburn* v. *Bank*, 13 La. An. 289; *People* v. *Walker*, 9 Mich. 328; *People* v. *Cornell*, 47 Barb. 329.)

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resolution, certified under his hand and under the Corporate Seal. (*g*) 29-30 V. c. 51, s. 153; 34 V. c. 30, s. 18.

Clerk to transmit a yearly return of ratepayers to the Provincial Treasurer.

**189.** The Clerk of every City, Town, Incorporated Village and Township shall, on or before the first day of December in each year, under a penalty of twenty dollars, to be paid to the Treasurer of Ontario, in case of default, (*h*) transmit to the Treasurer of Ontario a true return of the number of resident ratepayers appearing on the revised Assessment Roll of his Municipality for the year, and shall accompany such return with an affidavit made before a Justice of the Peace verifying the same, in the following form: (*i*)

Oath of verification.

I, *A. B.*, Clerk of the Municipality of the City (Town, Township or Village, *as the case may be*), make oath and say, that the above (or the within written, or the annexed return, *as the case may be*) contains a true statement of the number of resident ratepayers appearing on the Assessment Roll of the said City (Town, Township or Village) for the year one thousand eight hundred and

(Signed) *A. B.*

Sworn before me, *&c.* 29-30 V. c. 51, s. 154.

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(*g*) No provision is made for the funding of these fees by the Clerk; and there is no declaration making the fees his own. In the absence of some By-law or resolution authorising him to keep them, it would, it is presumed, be his duty to pay them over to the Corporation.

(*h*) The duty of the Clerk is to make the return required by this section "on or before the first day of December in each year," under the penalty named. The whole machinery of Municipal government assumes that certain things are done by certain days in the Municipal year, so that other things may in their order follow. Municipal officers cannot, therefore, regard provisions as to time with too much strictness. But if the thing required to be done within the time limited be not done, it does not follow that it cannot afterwards be done. It is, no doubt, important that it should be done within the time limited; but "it is still more important that it *should be done;* and therefore if, owing to some uncontrollable circumstance, it is not done on the proper day, it ought to be done on the next or some other." (*Per* Pollock, C. B., in *Hunt* v. *Hibbs*, 5 H. & N. 126.) So far as the public interests are concerned, the Act may be looked upon as directory. (*The King* v. *Norwich*, 1 B. & Ad. 310; see further, *Cole* v. *Green*, 6 M. & G. 872; *Morgan* v. *Parry*, 17 C. B. 334; *Brumfit* v. *Bremmer*, 9 C. B. N. S. 1; see also note *l* to sec. 59 of the Assessment Act.) But so far as the officers whose duty it is made to do the things within a limited time, the Act may be construed as imperative. (*Hunt* v. *Hibbs*, 5 H. & N. 126.) The Municipality may suffer in more ways than one if the officer neglect to perform his duty by the day named. (See sec. 194.)

(*i*) The return must be verified in the form given, and when so verified, transmitted within the time limited.

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**190.** The Clerk of every Township, Village and Town shall, in each year, within one week after the first day of March, under a penalty of twenty dollars, in case of default, (*k*) make a return to the Clerk of the County in which the Municipality is situate, of the following particulars respecting his Municipality for the year then last past, namely:

To make a yearly return to the county clerk.

[Heads of columns in Assessment Rolls to be varied according to the form of the Assessment Rolls required by law.]

What such return shall show.

1. Number of persons assessed.
2. Number of acres assessed.
3. Total actual value of real property.
4. Total of taxable incomes.
5. Total value of personal property.
6. Total amount of assessed value of real and personal property.
7. Total amount of taxes imposed by By-laws of the Municipality.
8. Total amount of taxes imposed by By-laws of the County Council.
9. Total amount of taxes imposed by By-laws of any Provisional County Council.
10. Total amount of Lunatic Asylum or other Provincial tax.
11. Total amount of taxes as aforesaid.
12. Total amount of income collected or to be collected from assessed taxes for the use of the Municipality.
13. Total amount of income from Licenses.
14. Total amount of income from Public Works.
15. Total amount of income from Shares in Incorporated Companies.
16. Total amount of income from all other sources.
17. Total amount of income from all sources.
18. Total expenditure on account of Roads and Bridges.
19. Total expenditure on account of other Public Works and Property.
20. Total expenditure on account of Stock held in any Incorporated Company.
21. Total expenditure on account of Schools and Education, exclusive of School Trustees' rates.
22. Total expenditure on account of the support of the Poor, or charitable purposes.
23. Total expenditure on account of Debentures, and Interest thereon.

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(*k*) See note *h* to sec. 189.

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24. Total gross expenditure on account of Administration of Justice in all its branches.
25. Amount received from Government on account of Administration of Justice.
26. Total net expenditure on account of Administration of Justice.
27. Total expenditure on account of Salaries, and the expenses of Municipal Government.
28. Total number of sheep worried by dogs, and the amount paid therefor by the Municipality.
29. Total expenditure on all other accounts.
30. Total expenditure of all kinds.
31. Total amount of Liabilities secured by Debentures.
32. Total amount of Liabilities unsecured.
33. Total liabilities of all kinds.
34. Total value of Real Property belonging to Municipality.
35. Total value of Stock in Incorporated Companies owned by Municipality.
26. Total amount of debts due to Municipality.
37. Total amount of arrears of taxes.
38. Balance in hands of Treasurer.
39. All other Property owned by Municipality.
40. Total Assets. 29-30 V. c. 51, s. 156.

County clerk to make a return to Provincial Secretary.

**191.** The Clerk of every County shall, before the first day of April in each year, (*l*) prepare and transmit to the Provincial Secretary a statement of the aforesaid particulars respecting all the Municipalities within his County, entering each Municipality in a separate line, and the particulars required opposite to it, each in a separate column, together with the sum total of all the columns for the whole County, and shall also make at the same time a return of the same particulars respecting his County as a separate Municipality. 29-30 V. c. 51, s. 157.

And also clerks of cities.

**192.** The Clerk of every City and Town separated from a County shall, before the first day of April in each year, (*m*) make a return to the Provincial Secretary of the same particulars respecting his City or Town. 29-30 V. c. 51, s. 158.

Provincial Secretary to lay the returns before the Legislative Assembly.

**193.** The Provincial Secretary shall, as soon as may be after the commencement of every Session, lay before the

(*l*) See note *h* to sec. 189.

(*m*) See note *h* to sec. 189.

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Legislative Assembly a copy of all returns hereinbefore required to be made. (*n*) 29-30 V. c. 51, s. 160.

Moneys to be retained if returns not made.

**194.** The Treasurer of the County shall retain in his hands any moneys payable to any Municipality, if it is certified to him by the Clerk of the County that the Clerk of such Municipality has not made the return hereinbefore required; and the Treasurer of Ontario shall retain in his hands any moneys payable to any Municipality, if it is certified to him by the Provincial Secretary that the Clerk of such Municipality has not made the returns hereinbefore required. (*nn*) 29-30 V. c. 51, s. 159.

DIVISION III.—THE TREASURER.

*His Appointment, Duties and Remuneration. Sec. 195–197. Successor may Draw Moneys. Sec. 198.*

Treasurer to be appointed.

**195.** Every Municipal Council shall appoint a Treasurer, (*o*) who may be paid either by salary or a percentage, (*p*) and the present Chamberlains of Cities shall be hereafter styled Treasurers; (*q*) and every Treasurer, before entering upon the duties of his office, shall give such security as the Council directs for the faithful performance of his duties, and especially for duly accounting for and paying over all moneys which may come into his hands; (*r*) and it shall be

To give security.

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(*n*) It is to be noted that while the duty of the Clerk, as to each return, is to make it on or before a particular day named (see secs. 189, 190, 191, 192), the Provincial Secretary is required, "as soon as may be after the commencement of every Session," to lay a copy of all the returns before the Legislative Assembly.

(*nn*) See note *h* to sec. 189.

(*o*) The offices of Treasurer and member of the Council are incompatible. (See note *n* to sec. 124.) *Quære*, are the offices of Clerk and Treasurer incompatible? (*Ib.*)

(*p*) A resolution, empowering a person to collect taxes due to the City, at a given rate per cent. on the amount collected, may be repealed or modified at any time by the Corporation, on the sole condition that the Corporation shall continue liable for any compensation earned under the resolution previous to its repeal or modification. (*Hestand* v. *New Orleans*, 14 La. An. 330; see further, note *t* to sec. 219.)

(*q*) This is more convenient than the distinction which hitherto existed between the two officers in name where there was no difference it fact.

(*r*) The Chamberlain or Treasurer is—

1. To give security.
2. The security is to be given before he enters upon the duties of his office.

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Annual enquiry as to sufficiency of.

the duty of every Council, in each and every year, to inquire into the sufficiency of the security given by such Treasurer, and report thereon. (*s*) 29-30 V. c. 51, s. 161.

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3. The security is to be for the faithful performance of his duties, and especially for duly accounting for and paying over all moneys which may come into his hands.

It is no objection to the bond that it was executed before the appointment to office was made. (*Essex* v. *Strong*, 8 U. C. L. J. 15; s. c. 21 U. C. Q. B. 149.) If the condition of the bond of a public officer substantially comply with the requirements of the Statute, Courts will endeavour to sustain the bond as against technical defences. (See *People* v. *Holmes*, 2 Wend. 281, *Ib.* 615; *Alleghany County* v. *Van Campen*, 3 Wend. 49; *Lawton* v. *Erwin*, 9 Wend. 233; *Postmaster-General* v. *Rice*, Gilpin, 554; *Montville* v. *Haughton*, 7 Conn. 543; *Commonwealth* v. *Wolbert*, 6 Binney, 292; *Thomas* v. *White*, 12 Mass. 369; *Morse* v. *Hodsdon et al*, 5 Mass. 314; *Kavanaugh* v. *Sanders*, 8 Greenl. 442; *Sweetzer* v. *Hay*, 2 Gray, 49; *Horn* v. *Whittier*, 6 N. H. 88; *Supervisors* v. *Coffinbury*, 1 Mich. 359.) The invalidity of the appointment cannot be set up as a defence to an action on a bond where moneys have been collected. (*Hoboken* v. *Harrison*, 1 Vroom. (N. J.) 73; *Seiple* v. *Elizabeth*, 3 Dutch, 407), nor can irregularities in the mode of appointment (*Whitby* v. *Harrison*, 18 U. C. Q. B. 603; *Whitby* v. *Flint*, 9 U. C. C. P. 449; *Todd* v. *Perry et al*, 20 U. C. Q. B. 649.) The imposition of additional taxes to those assessed at the time of taking the security and the increase of risk thereby, has been held not to violate a bond given for the general performance of duties and payment of moneys. (*Beverley* v. *Barlow et al*, 10 U. C. C. P. 178; s. c. 7 U. C. L. J. 117.) Nor is it a defence that the money received by the Treasurer was not demanded by the Government, which was entitled thereto. (*Essex* v. *Park*, 11 U. C. C. P. 473; see further, note *t* to sec. 196, and note *a* to sec. 197 of this Act, and note *b* to sec. 174 of the Assessment Act.) It has been held that sureties for an officer whose term is limited to a year, are not liable beyond the year, though the officer continue by law till his successor is appointed. (*The Queen ex rel. Ford* v. *McRae*, 5 Prac. R. 309; *Dover* v. *Twombly*, 42 N. H. 59; *Clemsford Co.* v. *Demorest*, 7 Gray, 1; *Mayor* v. *Horn*, 2 Harring (Del.) 190.)

(*s*) This is a most important duty, but, it is believed, the most neglected of all duties imposed on Councils. It may be that if the Municipality lose the benefit of their security by reason of a neglect to perform this duty on the part of the members of the Council, the latter could be made liable to make good the loss. One of the sureties of a Treasurer being desirous of being relieved from his suretyship, the Treasurer offered to the Council a new surety in his place. The Council thereupon passed a resolution approving of the new surety, and declaring that on the completion of the necessary bonds the withdrawing surety should be relieved. No further act on the part of the Council took place. But the Treasurer and his new surety (omitting the second surety) joined in a bond conditioned for the due performance of the Treasurer's duties for the future, and the Treasurer executed a mortgage to the same effect. The Clerk, on receiving these, gave up to the Treasurer the old bond and the Treasurer destroyed it. Eight years afterwards a false charge was

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**196.** Every Treasurer shall receive and safely keep all moneys belonging to the Corporation, and shall pay out the same to such persons and in such manner as the laws of the Province and the lawful By-laws or resolutions of the Council of the Municipal Corporation, whose officer he is, direct; (*t*)

To receive, take care of, and disburse moneys, &c.

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discovered in the accounts of the Treasurer of a date prior to these transactions, and it was held that the sureties on the first bond were responsible for it. (*Frontenac* v. *Breden*, 17 Grant, 645.)

(*t*) In an action by a Municipal Corporation against their Treasurer on his bond, charging him with not having paid over moneys received, it appeared that the Corporation had a contract with one E. to build bridges for them. E. wanting money, got the Reeve to endorse his note for $600, which was discounted by defendant at the Niagara District Bank, of which he was agent, as well as Treasurer of the Municipality. A few days afterwards another note for $400, made by E. and endorsed by other persons—one a member of the Corporation—was discounted at the same Bank. When these notes were about to fall due, a meeting of the Council took place, at which defendant was present, and the Reeve swore that it was then understood that the Council should assume these two notes, and he thought the defendant was authorized to charge them both to the Corporation; but other Councillors examined did not agree with the Reeve in their recollection of what took place; and the only resolution or minute in writing was that the Council should give their note for $700, to be used in the Niagara District Bank by the defendant. This note was accordingly made by the Reeve, and endorsed by the other members. *Held*, that under these facts the Treasurer had no right to charge the Council with the remaining $300. (*Ingersoll* v. *Chadwick*, 19 U. C. Q. B. 278.) In an account rendered by defendant to the Council, this $1,000 was charged as paid to E., and it was asserted the Council made subsequent payments to him, assuming the account to be correct. But, *held*, that assuming this to be the case, of which there was some question, the Council, by omitting to notice or object to this item, were not bound to pay it. (*Ib.*) If the Treasurer chooses to act upon the construction which he puts upon or the inferences which he draws from mere conversations among members of the Council which may take place in his presence, he does so at his own risk. He should be aware that no loose conversations of any one or more members of the Council can form a voucher that will acquit him for paying public money. (*Ib.* 285, *per* Robinson, C. J.) The Treasurer should not pay money on any or every draft and order which the Reeve for the time being may direct him to pay. The Township moneys will probably be considered as still in his hands unless paid out on a proper legal authority, for purposes contemplated and authorized by law, at least until he has received a formal acquittance and discharge from the Municipality. (*East Nissouri* v. *Horseman et al*, 9 U. C. C. P. 191, *per* Draper, C. J.) Nor should he pay money on an illegal order or resolution, for an Act of Parliament should be regarded by him as a higher authority than the resolution or By-law of a Corporation created by Act of Parliament (*per* Robinson, C. J., in *Daniels* v. *Burford*, 10 U. C. Q. B. 481); and if a Treasurer so pay money on an illegal order or resolution, he would be probably subject to criminal prosecution (*per* Robinson, C. J., in *East Nissouri* v. *Horseman*, 16 U. C. Q. B. 580).

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but no member of the Council shall receive any money from such Treasurer for any work performed or to be performed; (*u*)

His liability limited.

and such Treasurer shall not be liable to any action at law for any moneys paid by him in accordance with any By-law or resolution passed by the Council of the Municipality of which he is the Treasurer, unless when another disposition is expressly made of such moneys by statute. (*v*) 29-30 V. c. 51, s. 162.

Half-yearly statement of assets.

**197.** Every Treasurer shall also prepare and submit to the Council half-yearly, a correct statement of the moneys at the credit of the Corporation whose officer he is; (*a*) and

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(*u*) It is against the policy of the law that a member of a Council, who is a trustee for the people, should have any contracts with the Corporation, and so be in a position to make a profit out of his trust. (See note *u* to sec. 75.)

(*v*) The first part of the section makes it the duty of the Treasurer to pay out money in such manner as the laws of the Province and "the *lawful* By-laws or resolutions of the Council direct." But in order, it is presumed, to relieve the Treasurer from the responsibility of deciding what By-laws or resolutions are or are not legal, it is here provided that he shall not be liable to any action for "*any* moneys paid by him in accordance with *any* By-law or resolution passed by the Municipal Council of the Municipality of which he is Treasurer." In other words, the By-law or resolution, whether legal or illegal, if requiring him to pay the money, is a protection to him. This part of the section is, it is believed, designed to relieve Treasurers from the embarrassment indicated, and if not so read will contradict the first part of the section.

(*a*) The money of the Municipality should be by the Treasurer deposited and kept to "the credit of the Corporation," and not to his own credit. They should be kept in a separate account and not be mixed up with the Treasurer's private money. (*Peers* v. *Oxford*, 17 Grant. 472.) Most of the losses which Municipalities have sustained have arisen through the misconduct of their Treasurers, being tempted to use and using the money of the Corporation for purposes of speculation or otherwise as their own. The only safe course for a Treasurer to adopt is to keep strict account of the moneys entrusted to his charge, and on no account whatever to touch it, except for Corporation purposes. A County Treasurer had, through a misapprehension of what was the proper course, been allowed to mix all County money with his own, and had used for his private purposes a large sum of money received in that way. In this state of things he had occasion to give the Corporation a new bond, with two new sureties. Shortly afterwards it was ascertained that he was not able to pay his balance to the Corporation. The sureties filed a bill to be relieved from their bond, on the ground of the Treasurer's misconduct, and of the uncommunicated knowledge of that misconduct by the representatives of the Corporation at the time the bond was given; but the Court being of opinion that most of the facts relied on as proving misconduct were known to the sureties, and

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in Cities, Towns, Incorporated Villages and Townships which have passed By-laws requiring this to be done, the Treasurer shall, on or before the twentieth day of December in each year, (*b*) prepare and transmit to the Clerk of the Municipality a list of such persons who shall not have paid their Municipal taxes on or before the fourteenth day of said month of December. 29-30 V. c. 51, s. 163.

Annual list of persons in default for taxes.

**198.** In case any Treasurer is dismissed from office or absconds, it shall be lawful for his successor to draw any moneys belonging to such Municipality. (*c*) 29-30 V. c. 51, s. 163.

Provision on dismissal from office.

DIVISION IV.—ASSESSORS AND COLLECTORS.

*Certain Councils to appoint. Sec. 199, 200.*
*Township Collectors to act for Provisional Corporations. Sec. 201, 202.*

**199.** The Council of every City, Town, Township and Incorporated Village shall, as soon as may be convenient after the annual election, appoint as many Assessors and Collectors for the Municipality as the Assessment laws from

Assessors and collectors, appointments and qualification of.

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that no information had been withheld from them fraudulently, held the bond to be valid. (*Ib.*) A surety cannot get rid of his liability on the ground of having become surety in ignorance of material facts, unless he can show the information was *fraudulently* withheld from him. (*East Zorra* v. *Douglass*, 17 Grant, 462.) So the fact that the Council tacitly permits the Treasurer to mix the money of the Municipality with his own is not of itself any defence to the sureties. (*Ib.*) Plaintiffs declared on a bond conditioned that their Treasurer should pay over all moneys received since the 1st January, 1866, averring that on that day he had in his hands a large sum, and received further sums up to the 6th April, 1868, when he was dismissed. He accounted for all moneys received before the 1st January, 1866, but not for a large sum received since. The plea denied payment of all moneys since that date. The case was referred to an arbitrator, who found that the Treasurer admitted $3,031 to be due by him on the 1st January, 1866; that he had accounted for all moneys received since; and that of all the moneys received up to his dismissal, including this $3,031, the balance was $1,806. It was held, looking at the particular form of the breach, that the sureties were not liable. (*Rawdon* v. *Ward et al*, 27 U. C. Q. B. 609.)

(*b*) See note *h* to sec. 189.

(*c*) In other words, the withdrawal of moneys after dismissal is not to affect the right of the Municipality against the sureties of the dismissed Treasurer. But it is recommended that so soon as the dismissal takes place, the sureties be informed of the fact, and be thereby placed in a position, and as far as possible without detriment to the Municipality, to protect themselves.



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time to time authorize or require, (*d*) and shall fill up any vacancy that occurs in the said offices as soon as may be convenient after the same occurs; (*e*) but the Council shall not appoint as Assessor or Collector a member of the Council; (*f*) but the same person may, in a City, Town or Township, be appointed Assessor or Collector for more than one Ward or Electoral Division; and in Municipalities which have passed By-laws requiring taxes to be paid on or before the fourteenth day of December, it shall be the duty of the Collectors, on the fifteenth day of December in each year, (*g*) upon oath, to return to the Treasurer the names of all persons who have not paid their Municipal taxes on or before the fourteenth day of the said month of December. 29-30 V. c. 51, s. 164.

In cities, assessment commissioner may be appointed instead of such assessors, &c.

**200.** In Cities, the Council, instead of appointing Assessors under the foregoing section, may appoint an Assessment Commissioner, who, in conjunction with the Mayor for the time being, shall from time to time appoint such Assessors and Valuators as may be necessary; and such Commissioner, Assessors and Valuators shall constitute a Board of Assessors, and shall possess all the powers and perform the duties of Assessors appointed under the last preceding section; (*h*) and the Council shall also have power by By-law to determine the number of Collectors to be

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(*d*) See note *r* to sec. 184.

(*e*) It was made a question whether the Council, once having appointed an Assessor, could cancel the appointment at their mere will and pleasure. (*In re McPherson and Beeman*, 17 U. C. Q. B. 99; but now, see sec. 220 of this Act.) The Council, by resolution, appointed B. Assessor, who was sworn into office, and made the assessment. This appointment was made by a vote of three against two. The election of one of the three Councillors was afterwards set aside, and by a subsequent vote the resolution was rescinded, and a By-law passed appointing a different person Assessor. Both made assessments, and in consequence much confusion arose. The Court, under these circumstances, granted a *quo warranto* to determine the validity of the last appointment. (*In re McPherson and Beeman*, 17 U. C. Q. B. 99.)

(*f*) The offices are incompatible. (See note *n* to sec. 124.)

(*g*) See note *h* to sec. 189.

(*h*) This provision for the appointment of a Board of Assessors is new. It is restricted in its operation to Cities. The object of the provision is to secure, as much as possible, efficiency, economy and uniformity of assessment. Different men have different ideas as to value. Some men are gloomy and others hopeful. The temperament of the man often unconsciously governs the valuation; and it has

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appointed and prescribe their duties, (*i*) and may by By-law require the payment of taxes to be made into the office of the Treasurer by a day to be named, and in default may in said By-law impose an additional percentage charge on every unpaid tax or assessment, which shall be added to such unpaid tax or assessment, and collected by the Collectors as if the same had originally been imposed and formed part of such unpaid tax or assessment; (*k*) and any Commissioner, Assessor or Collector to be appointed by any City need not

On default of payment of taxes, additional percentage may be imposed.

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been found that when Assessors in the different Wards of a City act independently of each other, property in some Wards is assessed higher than in others. For remedy, provision is made for the constitution of a Board of Assessors. The Board is made to consist of an Assessment Commissioner, Assessors and Valuators. The Commissioner is appointed by the City Council, and the Assessors and Valuators by the Commissioner, acting in conjunction with the Mayor. There is no limit to the number of Assessors and Valuators. As many "as may be necessary" may be appointed; and the appointments may be made "from time to time." The Commissioner, Assessors and Valuators, like other officers of the Corporation, hold office during pleasure. It is not necessary, therefore, that they should, like members of the Council, be appointed or elected annually.

(*i*) It will be observed that the Collectors, like the Commissioner and Assessors, need not be annually appointed, and hold office during pleasure. As to bonds given by Municipal officers concerned in the collection of money, see note *r* to sec. 195.

(*k*) This provision, which is new, is intended to meet a want. In the past it has been found that many tax-payers delay the payment of their taxes so long as to render it necessary for the Council to procure accommodation at the Banks, and pay considerable amounts as interest or discount. (See sec. 303 and notes.) This was not fair to those who paid their taxes promptly. They not only lost the use of their money before the dilatory tax-payer did, but their property, in common with other property, became subject to bear the burden of increased taxation to meet Bank discounts and interest on advances. It may now, in Cities, by By-law be made the duty of all tax-payers to pay their taxes *by a day named*. Those in default may, under the operation of the By-law, be subjected to a percentage which will be sufficient, under any circumstances, to meet the increased burden arising from the payment of interest or discount on money borrowed to meet the current expenses and other obligations of the City by reason of the default to pay taxes by the day named. The effect will be to shift the burden from the general body of the ratepayers, and place it only on those whose neglect or default rendered necessary the creation of the burden. It is presumed that the percentage will be made as nearly as possible to correspond with the probable amount of the burden. If this were not the case—if the percentage were made larger than necessary for such a purpose—an annual surplus would arise in excess of the estimated wants of the Corporation. This would be contrary to all well understood principles of Municipal taxation.

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Tenure of office of commissioner, assessors, &c.

Extension of time for return of assessment rolls, &c.

be appointed annually, but shall hold office at the pleasure of the Council; (*l*) and any City availing itself of this provision for the current year may extend the time for the return of the Assessment Rolls till the fifteenth day of August, and for closing the Court of Revision till the fifteenth day of September next, and for final return by the Judge of the County Court till the first day of October next; (*m*) and all notices heretofore given to the City Clerk in matters relative to assessment, shall be given to the Assessment Commissioner. (*n*)

Collector of provisional council.

Payments.

**201.** The Collectors of the several Townships in a Junior County of a Union of Counties shall *ex officio* be Collectors in such Townships for the Provisional Council, (*o*) and the Collectors shall pay over to the Provisional Treasurer the money they collect under any By-law of the Provisional Council. (*p*) 29-30 V. c. 51, s. 167.

Moneys, how to be disposed of.

**202.** The money so collected shall be deemed the money of the Union, so far as necessary to make the Collectors and their sureties responsible to the Union therefor; (*q*) and in

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(*l*) See sec. 220 and notes thereto.

(*m*) This is a temporary provision: it will expire with the current year. Its existence is owing to the fact that the provision under consideration is a new one, in a new Act which was only sanctioned after the time when, under ordinary circumstances, Assessors would have been abroad in the discharge of their duty.

(*n*) The office of Assessment Commissioner is one of considerable importance. Taxes should be as small as possible, collected at as little expense as possible, and as uniform as possible. It is believed by those who favour such an office as here authorized that there will be more efficiency, more economy, and more uniformity than under the old system. Whether the expectations of those who entertain these views will be realised must, to a great extent, depend upon the general ability and business qualities of the Commissioner, if and only when aided by an efficient staff of subordinates.

(*o*) The powers of a Provisional Council are not in any way intended to interfere with the powers of the Council of the Union. (Sec. 39.) Any money raised by the Provisional Council in the Junior County is independent of any money raised therein by the Council of the Union. (*Ib.*)

(*p*) No time is limited for the payment. In the absence of a specific time the law implies a reasonable time.

(*q*) The Corporation of the Union is, as it were, a trustee of the money for the Corporation of the Provisional Council. But as between the former and its officers, it is no defence to the latter that the Corporation of the Union is not beneficially interested in the money.

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case the Corporation of the Union receives the same, such Corporation shall immediately pay the amount to the Provisional Treasurer, retaining the expenses of collection. (*r*) 29-30 V. c. 51, s. 168.

DIVISION V.—AUDITORS AND AUDIT.

*Appointment and Duties. Sec. 203, 204.*
*Abstract of Receipts and Expenditures. Sec. 205.*
*Publication of Audit. Sec. 206.*
*Council to Finally Audit. Sec. 207.*
*County Council to Regulate and Audit County Moneys. Sec. 208, 209.*

Auditors.

**203.** Every Council shall, at the first meeting thereof, in every year after being duly organized, (*s*) appoint two Auditors, one of whom shall be such person as the Head of the Council nominates; (*t*) but no one who, at such time, or during the preceding year, is or was a member, or is or was Clerk or Treasurer of the Council, (*u*) or who has, or during such preceding year had, directly or indirectly, alone or in conjunction with any other person, a share or interest in any contract or employment with or on behalf of the Corporation, (*v*) except as Auditor, (*w*) shall be appointed an Auditor. 29-30 V. c. 51, sec. 169.

Disqualification for office of.

Duties of.

**204.** The Auditors shall examine and report upon all accounts affecting the Corporation, or relating to any matter under its control or within its jurisdiction, for the year

(*r*) It would seem that a demand of some kind of the money ought to be made before commencing a suit for its recovery. (See *Caledon* v. *Caledon*, 12 U. C. C.P. 301.)

(*s*) See note *i* to sec. 120.

(*t*) The Council is to appoint two Auditors annually, but one of them is to be a person nominated by the Head of the Council. Hence it will be seen that a nomination by the Head of the Council, though not in terms an appointment, is, under this section, in effect the same.

(*u*) The offices are incompatible. (See note *n* to sec. 124.) The disqualification extends to the holding of the incompatible office "during the preceding year." (See *The Queen* v. *Hiorns*, 7 A. & E. 960.)

(*v*) See note *u* to sec. 75.

(*w*) This is to permit the same individual to be reappointed to the office of Auditor. Audits in Cities and Towns may be daily (see sec. 209), and in other Municipalities monthly or quarterly, as directed by By-laws on that behalf. (*Ib.*)

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ending on the 31st day of December preceding their appointment. (*a*) 29-30 V. c. 51, s. 170.

To prepare abstract and detailed statement of receipts and expenditures, &c.

**205.** The Auditors shall prepare an abstract of the receipts, expenditures, assets and liabilities of the Corporation, and also a detailed statement of the said particulars, in such form as the Council directs, and report in duplicate on all the accounts audited by them, and make a special report of any expenditure made contrary to law, (*b*) and shall file the same in the office of the Clerk of the Council within one month after their appointment; (*c*) and thereafter any inhabitant or ratepayer of the Municipality may inspect one of such duplicate reports at all seasonable hours, and may, by himself or his agent, at his own expense, take a copy thereof or extracts therefrom. (*d*) *Vide* 29-30 V. c. 51, s. 171.

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(*a*) Negligence of the Auditors in examining and reporting upon accounts will not, under ordinary circumstances, relieve those indebted to the Corporation from the payment of their liabilities. (See *In re Eldon and Ferguson*, 6 U. C. L. J. 207.) "It seems to me to be a monstrous proposition, that an officer of the Corporation may wilfully or even negligently omit to enter the receipt of moneys; and because the Auditors have not been able to discover the omission, and the Corporation approves of the report, that when the omissions are discovered the officer may set up the audit to cover his own fraud or neglect." (*Ib.* 209, *per* Richards, J.) A surety for the due performance of a Treasurer's duties is not relieved from liability by the negligence of the Auditors in proving the Treasurer's accounts. (*Frontenac* v. *Breden*, 17 Grant, 645.) The fact of the Treasurer having become reduced in his circumstances after the auditing and passing of his accounts, and before the discovery of an error in them, is no bar to a suit against the surety. (*Ib.*)

(*b*) The duties of Auditors, under this section, may be thus classed:

1. To prepare an abstract of the receipts, expenditures, assets and liabilities of the Corporation.

2. To prepare a detailed statement of the said particulars, in such form as the Council directs.

3. To report in duplicate on all accounts audited by them.

4. To make a special report of any expenditure contrary to law.

5. To file the reports in the office of the Clerk of the Council within one month after appointment.

(*c*) See note *h* to sec. 189.

(*d*) The right to inspect the Auditors' report is extended to "any inhabitant *or* ratepayer." The difference between an inhabitant and a ratepayer is, that "inhabitant" means a resident, whether a ratepayer or not, and that a "ratepayer" is a person who pays taxes, whether a resident or not. (See *The King* v. *North Curry*, 4 B. & C. 961.) Mere colourable residence is insufficient to constitute a person an inhabitant. (*The King* v. *Sargent*, 5 T. R. 466; *The King* v. *Duke*

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**206.** The Clerk shall publish the Auditors' abstract and report (if any), and shall also publish the detailed statement in such form as the Council directs. (*e*) 29-30 V. c. 51, s. 173. Clerks to publish abstracts and statements.

**207.** The Council shall, upon the report of the Auditors, finally audit and allow the accounts of the Treasurer and Collectors, and all accounts chargeable against the Corporation; and in case of charges not regulated by law, the Council shall allow what is reasonable. (*f*) 29-30 V. c. 51, s. 172. The council to audit finally, &c.

**208.** Every County Council shall have the regulation and auditing of all moneys to be paid out of the funds in the hands of the County Treasurer. (*g*) 29-30 V. c. 51, s. 174. Audit of moneys to be paid by treasurer.

**209.** The Council may also appoint in Cities and Towns an Auditor, who shall, daily or otherwise, as directed by the Council, examine and report and audit the accounts of the Corporation, in conformity with any regulation or By-law of the Council, (*h*) and in other Municipalities the Auditors shall also, monthly or quarterly, as directed by By-law, Audit of accounts in cities. In other municipalities.

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*of Richmond*, 6 T. R. 560; *Bruce* v. *Bruce*, 2 B. & P. 229, *n*; *The King* v. *Mitchell*, 10 East. 511; *Whithorn* v. *Thomas*, 7 M. & G. 1; see further, note *f* to sec. 188.)

(*e*) This, notwithstanding the use of the word "shall," it is apprehended, is directory, not imperative. (See *Striker* v. *Kelly*, 7 Hill. (N. Y.) 9; In Error, 2 Denio, 323; *Indianola* v. *Jones*, 29 Iowa, 282; *In re Mount Manor Square*, 2 Hill. 20; *Elmendorf et al* v. *New York*, 25 Wend. 693; see further, note *h* to sec. 189 of this Act, and note *n* to sec. 26 of the Assessment Act).

(*f*) Notwithstanding the use of the word "final" in this section, it is believed that the Corporation may, on the discovery of fraud or mistake, recover moneys due to them on accounts audited, although according to the report of the Auditors nothing is due, and notwithstanding the allowance of the accounts upon the basis of the supposed correctness of the audit. (See note *a* to sec. 204.)

(*g*) The power of the County Council is to regulate *and* audit all moneys to be paid, &c. The word "regulate" appears to refer to an order prior to payment, as does the word "audit" refer to an act done after payment. The Council have, under section 207, a general power to finally audit and allow all the accounts of the Treasurer, &c., and all accounts chargeable against the Corporation. (See note *a* to sec. 204.)

(*h*) There was nothing in the old law to prevent a daily audit; but as regards Cities and Towns, there is now in this section an express declaration that the Auditors shall, "daily or otherwise," as directed by the Council, examine, report and audit accounts. The person appointed would, it is presumed, be subject to the disqualifications mentioned in section 203. As to the effect of the audit, see note *a* to sec. 204.

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examine into and audit the accounts of the Corporation. (*i*) *New.*

DIVISION VI.—VALUATORS.

*Appointment of. Sec. 210.*

County council may appoint valuators, their duties, &c.

**210.** The Council of every County may appoint two or more Valuators, for the purpose of valuing the real property within the County, whose duty it shall be to ascertain, in every fifth year at furthest, the value of the same in the manner directed by the County Council, but such Valuators shall not exceed the powers possessed by assessors, and the valuation so made shall be made the basis of equalization of the real property by the County Council for a period not exceeding five years, and the equalization of personal property shall be as heretofore. (*k*) 29-30 V. c. 51, s. 175.

Equalization of real property.

DIVISION VII.—DUTIES OF, RESPECTING OATHS AND DECLARATIONS.

*Declarations of Office and Qualification. Sec. 211–213.*
*Before whom made. Sec. 214.*
*Power to administer other Oaths and Declarations. Sec. 215.*
*Record, and Deposit of. Sec. 216.*
*Oaths respecting matters before Council. Sec. 217.*

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(*i*) In rural Municipalities the accounts are not usually as numerous as in Cities and Towns. While in the case of the latter the audit may be "daily or otherwise," in the case of other Municipalities it may be "monthly" or "quarterly," as directed by By-law.

(*k*) Before the Act of 1866, a County Council arrived at the value of lands, situate in the several local Municipalities of the County, merely by a process of equalization on an assumed or arbitrary valuation, with the object of producing a just relation between the different local Municipalities without reducing the aggregate valuation of the whole County. This was found unsatisfactory, and for remedy section 175 of the Act of 1866 was enacted. The appointment of County Valuators is the main feature of the remedy, and is left discretionary with the County Councils. The purpose of the appointment is "the valuing the real property" in the County. The duty of the Valuators, when appointed, is to ascertain the value "in the manner directed by the County Council," but on this stipulation: that they (the Valuators) are not to "exceed the powers possessed by assessors under this Act." The valuing may be as often or as seldom as the County Council see fit, provided it be done "in every fifth year *at furthest.*" It is not supposed that a valuation will be necessary every year. But in some localities real property fluctuates in value more than in others, and so, within the limit mentioned, a discretion is vested in the County Council. The section has reference only to real property. In this respect it differs from the section which it re-enacts. The former enactment applied to "the valuing of real and personal property."

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*Penalty for refusing Office, or not making or refusing to administer Declarations. Sec. 218.*

**211.** Every person elected or appointed under this Act (*l*) to any office requiring a qualification of property in the incumbent, (*m*) shall, before he takes the declaration of office, or enters on his duties, (*n*) make and subscribe a solemn declaration to the effect following:

Declaration of office by certain officers.

I, *A. B.*, do solemnly declare that I am a natural-born (*or* naturalized) subject of Her Majesty; (*o*) and have and had to my own use and benefit, in my own right (*or* have and had in right of my wife, *as the case may be*), as proprietor (*or* tenant, *as the case may be*), at the time of my election to the office of , hereinafter referred to (*or* appointment, *as the case may require*), such an estate (*p*) as does qualify me to act in the office of (*naming the office*) for (*naming the place for which such person has been elected or appointed*), and that such estate is (*the nature of the estate to be specified* (*q*) *as an equitable estate of leasehold or otherwise, as the*

Declaration of qualification.

Form of.

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(*l*) "Elected *or* appointed." As to the difference, see note *c* to sec. 129.

(*m*) This applies to members of the Council. (See sec. 71.)

(*n*) The election of a head of the Council is "a duty," within the meaning of this section. (See *In re Hawk and Ballard*, 3 U. C. C. P. 241.)

(*o*) See note *ii* to sec. 71, and note *f* to sec. 77.

(*p*) See note *m* to sec. 71, and note *e* to sec. 77.

(*q*) It was attempted to unseat a member of a Council on the ground that he had not, in his declaration of office, specified the nature of the estate; but it was held that such an objection could not be made a ground for setting aside an election under the summary provisions of the statute. (*The Queen ex rel. Halsted* v. *Ferris*, 6 U. C. L. J. N. S. 266.) Besides, it is to be observed that there is no declaration in the statute to the effect that an omission to take the declarations required shall be a forfeiture of office. (See *The Queen* v. *Humphrey*, 10 A. & E. 335.) A refusal to take the oaths of office has been held equivalent to a refusal of the office. (*The King and Queen* v. *Larwood*, Carthew, 306; *Exeter* v. *Starre*, 2 Show. 158; s. c. In Error, 3 Lev. 116.) Upon the declarations being made, the office becomes full, *de facto*. (*The King* v. *Swyer*, 10 B. & C. 486; *The King* v. *Winchester*, 7 A. & E. 215.) Before the Court will entertain an application for a *quo warranto*, it must be made to appear that the declarations required by the statutes were made. (*The Queen* v. *Slatter*, 11 A. & E. 505; see also *The King* v. *Tate*, 4 East. 337; see further, note *n* to sec. 218.) There is a penalty imposed by this Act for refusal to accept office, or neglect to do so, after knowledge of election or appointment. (Sec. 218.)

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*case may require, and if land the same to be designated by its local description, rents or otherwise*); and that such estate, at the time of my election (*or* appointment, *as the case may require*), was of the value of at least (*specifying the value*) over and above all charges, liens and incumbrances affecting the same. (*r*) 29-30 V. c. 51. s. 178.

Declaration of office by certain officers.

**212.** Every Returning Officer and Returning Officer's Clerk, every member of a Municipal Council, every Mayor, and every Clerk, Assessor, Collector, Constable and other officer appointed by a Council, (*s*) shall also, before entering on the duties of his office, make and subscribe a solemn declaration (*t*) to the effect following:

Form of declaration of office.

I, *A. B.*, do solemnly promise and declare that I will truly, faithfully and impartially, to the best of my knowledge and ability, execute the office of (*inserting the name of the office*) to which I have been elected (*or* appointed) in this Township (*as the case may be*) and that I have not received and will not receive any payment or reward, or promise of such, for the exercise of any partiality or malversation or other undue execution of the said office, and that I have not by myself or partner, either directly or indirectly, any interest in any contract with or on behalf of the said Corporation. (*u*) 29-30 V. c. 51, ss. 179 & 180.

Auditor's declaration.

**213.** The solemn declaration to be made by every Auditor (*a*) shall be as follows:

Form of.

I, *A. B.*, having been appointed to the office of Auditor for the Municipal Corporation of , do hereby promise and declare that I will faithfully perform the duties of such office according to the best of my judgment and ability; (*b*) and I do solemnly declare, that I had not directly or indirectly any share or interest whatever in any contract or employment (*except that of Auditor, if re-appointed*) with, by or on

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(*r*) See note *n* to sec. 71.

(*s*) For corporate purposes there may be an implied power to appoint officers where appointment is not expressly authorized by the statute. (See note *r* to sec. 184.) This section extends to all officers appointed by the Council, whether officers named in the statute or not.

(*t*) The omission to make and subscribe the declaration is not made a forfeiture of the office. (See note *q* to sec. 211.)

(*u*) See note *u* to sec. 75.

(*a*) See sec. 203 as to appointment of Auditors.

(*b*) See secs. 204 & 205 as to duties of Auditors.

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behalf of such Municipal Corporation, during the year preceding my appointment, and that I have not any such contract or employment, except that of Auditor, for the present year. (*c*) 29-30 V. c. 51, s. 181.

Before whom declaration to be made.

**214.** The Head and other members of the Council, and the subordinate officers of every Municipality, shall make the declaration of office and qualification before some Court, Judge, Police Magistrate or other Justice of the Peace having jurisdiction in the Municipality for which such Head, members or officers have been elected or appointed, or before the Clerk of the Municipality; (*d*) and the Court, Judge or other persons before whom such declarations are made, shall give the necessary certificate of the same having been duly made and subscribed. (*e*) 29-30 V. c. 51, ss. 182 & 183; c. 52, s. 117.

Certificate of declaration.

Certain officers may administer certain oaths, &c., within municipality.

**215.** The Head of any Council, any Alderman, Reeve or Deputy Reeve, any Justice of the Peace, and the Clerk of a Municipality, may, within the Municipality, administer any oath, affirmation or declaration under this Act, relating to the business of the place in which he holds office, except where otherwise specially provided, and except where he is the party required to make the oath, affirmation or declaration. (*f*) 29-30 V. c. 51, s. 184.

Oath or declaration to be subscribed and kept.

**216.** The deponent, affirmant, or declarant shall subscribe every such oath, affirmation or declaration, (*g*) and the person

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(*c*) This is to meet the requirements of the latter part of sec. 203.

(*d*) The administering of the declarations of office is so far obligatory as to be enforceable by a penalty. (See sec. 218.)

(*e*) The certificate is to the effect that the declaration has been made *and* subscribed — two things essentially different, but each necessary to complete the taking of the declaration. (See *The Queen ex rel. McManus* v. *Ferguson*, 2 U. C. L. J. N. S. 19.)

(*f*) The authority of the officers named, is not to administer all oaths, affirmations or declarations, but only such as relate to the business of the place in which the officer administering the oath, affirmation or declaration holds office, and thus is made subject to two obvious exceptions:

1. Where otherwise specially provided.

2. Where he is the party required to make the oath, affirmation or declaration.

(*g*) A deponent is one who makes a lawful oath; an affirmant is one who by law is permitted to affirm when otherwise he would be required to make an oath; and a declarant is a person who, instead of making either oath or affirmation, makes a solemn declaration.

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administering it (*h*) shall duly certify and preserve the same, and within eight days deposit the same in the office of the Clerk of the Municipality to the affairs of which it relates. (*i*) 29-30 V. c. 51, s. 185.

Heads of council may administer certain oaths, &c.

**217.** The Head of every Council, or in his absence the Chairman thereof, may administer an oath or affirmation to any person concerning any account or other matter submitted to the Council. (*k*) 29-30 V. c. 51, s. 366.

Penalty for refusing to accept office or administer declaration, &c.

**218.** Every qualified person duly elected or appointed (*l*) to be a Mayor, Alderman, Reeve or Deputy Reeve, Councillor, Police Trustee, Assessor or Collector of or in any Municipality, (*m*) who refuses such office, (*n*) or does not make

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(*h*) See note *d* to sec. 214.

(*i*) The duty of a person administering an oath, &c., of the kind authorized is twofold:

1. To certify and preserve the same.

2. Within eight days to deposit the same in the place mentioned.

As to computation of time, see note *a* to sec. 128.

(*k*) Heads of Councils may, under section 215, administer oaths, affirmations or declarations under the Act "relating to the business of the place in which he holds office." This extends the powers to oaths or affirmations "concerning *any* account or *other* matter submitted to the Council," and enables the Chairman of the Council, acting in the absence of the Head of the Council, to administer the last mentioned oaths or affirmations. The purpose, apparently, is to authorize some officer to act on the spur of the moment when deemed necessary to verify accounts or other matter submitted to the Council.

(*l*) It should be noticed that this section is only made obligatory upon *qualified* persons; so that persons really disqualified under section 75 of this Act or exempted under section 76, though elected, would not, it is believed, be bound to take the declarations of office and qualification. It would not be fair to compel such persons to do so. (See *The King* v. *Leyland*, 3 M. & S. 186.)

(*m*) The section only applies to particular officers named and to the case of a qualified person appointed or elected, and, when elected, himself returned as elected. (*The Queen ex rel. Mackley* v. *Coaks*, 3 E. & B. 249.) So that it would not apply to the case in which another was returned, though improperly. (*Ib.*) As to officers other than those named, see sec. 372, sub. 11 *a*.

(*n*) The acceptance of the office, when the person returned as elected or appointed is qualified, is obligatory. It is an offence at common law for a person to refuse to serve in an office when duly elected. (*Vintner's Company* v. *Passey*, 1 Burr. 239; *The Queen* v. *May*, 20 L. J. Q. B. 268.) A person so refusing may be indicted (*The King* v. *Burder*, 4 T. R. 778; *Vanacker's Case*, 1 Ld. Rayd. 496), or, in case of urgency, may be proceeded against by criminal

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the declarations of office and qualification within twenty days after knowing of his election or appointment, (*o*) and every person authorized to administer any such declaration, who, upon reasonable demand, refuses to administer the same, (*p*) shall, on summary conviction thereof before two or more Justices of the Peace, forfeit not more than eighty dollars, nor less than eight dollars, at the discretion of such Justices, to the use of the Municipality, together with the cost of prosecution. (*q*) 29-30 V. c. 51, s. 186. How enforced.

DIVISION VIII.—SALARIES AND TENURE OF OFFICE.

*If not otherwise settled, Council to fix. Sec. 219.*
*Tenure till removal. Sec. 220.*
*Gratuities to. Sec. 221.*

Salaries of officers.

**219.** In case the remuneration of any of the officers of the Municipality (*r*) has not been settled by Act of the

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information (*The King* v. *Woodrow*, 2 T. R. 731; *The King* v. *Leyland*, 3 M. & S. 186), or mandamus (*The King* v. *Whitwell*, 5 T. R. 85; *The King* v. *Bower*, 1 B. & C. 585), in the discretion of the Court. (*The King* v. *Grosvenor*, 2 Str. 1193; *The Queen* v. *Hungerford*, 11 Mod. 142.)

(*o*) Casual information is not sufficient. Before an elected officer can be visited with heavy penalties, imposed for neglecting to accept his office, he must have regular notice of his own election, either by being actually present when it is announced, or being apprised of the fact by some official authority. (*Per* Denman, C. J., in *The Queen* v. *Preece*, 5 Q. B. 97; see also *London* v. *Vanacre*, 1 Salk. 142.)

(*p*) It is believed that the administering of the declaration is purely a ministerial act. But it has been held that the person administering it so far acquiesces as to disentitle himself to be a relator in proceedings to set aside the election. (*The Queen* v. *Greene*, 2 Q. B. 460.)

(*q*) This section does not declare that the payment of the fine shall be in lieu of service. Mere payment of the fine is not any excuse for non-acceptance of the office. (See *The King* v. *Bower*, 1 B. & C. 585, and *The Queen ex rel. Blasdell* v. *Rochester*, 7 U. C. L. J. 101; see also *The Queen* v. *Dulsen*, *Ib.* 71.)

(*r*) Under a power to remunerate all "township *officers*," it was held that Municipal Councillors had no authority to remunerate themselves. (*In re Wright and Cornwall*, 9 U. C. Q. B. 442; *Daniels* v. *Burford*, 10 U. C. Q. B. 478.) And it was made a question whether the Warden of a County, or Mayor of a City, is to be deemed an officer, so as to be entitled to remuneration as such. (*The Queen* v. *Gore*, 5 U. C. Q. B. 357; *In re McLean and Cornwall*, 31 U. C. Q. B. 314.) But now, such questions are to some extent set at rest; for the Council of every Township and County may pass By-laws for paying the members of the Council for their attendance in Council (sec. 172), and so the Council of every City, Town or Incorporated

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Legislature, (*s*) the Council shall settle the same; (*t*) and the Council shall provide for the payment of all Municipal officers, whether the remuneration is settled by statute or by

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Village may pass By-laws for payment to the Mayor of such annual sum or other remuneration as the Council sees fit. (Sec. 173.)

(*s*) Where a Municipal Council, in 1850, passed a vote assigning to the Clerk of the Peace a fixed salary for that year "in lieu of all fees," it was held that this did not debar him from claiming fees allowed by the Jury Act, 13 & 14 Vic. cap. 55, which was passed subsequently in the same year, (*Pringle* v. *McDonald*, 10 U. C. Q. B. 254.) General powers to a Corporation to fix the compensation of its officers, does not authorize it to take away the fees of an officer specifically fixed by their Charter or Act of Incorporation. (*Carr* v. *St. Louis*, 9 Mo. 190.) So, if the Legislature provide that one board shall fix the remuneration of Corporation officers, it is not competent for another board to do so. (*People* v. *Auditors of Mayne*, 13 Mich. 233.)

(*t*) Municipal officers are not entitled to compensation unless the right to compensation is expressly given by statute, by-law, resolution or contract. (*Jones* v. *Carmarthen*, 8 M. & W. 605. *Thomas* v. *Swansea*, 2 Dowl. N. S. 470; *The Queen* v. *Prest*, 16 Q. B. 32; *Sikes* v. *Hatfield*, 13 Gray, 347; *Barton* v. *New Orleans*, 16 La. An. 317; *Garnier* v. *St. Louis*, 37 Mo. 554; see also *Baker* v. *Utica*, 19 N. Y. 326; *People* v. *Supervisors*. 1 Hill, 362; *Cumming* v. *Brooklyn*, 11 Paige, 596; *Jersey* v. *Quaife*, 2 Dutch (N. Y.) 63; *Andrews* v. *United States*, 2 Story (C. C.), 202; *United States* v. *Brown*, 9 How. 487; *Barton* v. *New Orleans*, 16 La. An. 395; *Smith* v. *Commonwealth*, 41 Pa. St. 335; *McClung* v. *St. Paul*, 14 Min. 420; *Boydon* v. *Brookline*, 8 Ver. 284; *Langdon* v. *Castleton*, 30 Ver. 285.) And where provision is made for their remuneration by salary, they have no claim for compensation, *extra* the salary, for services alleged to be outside of their official duties (*Andrews* v. *United States*, 2 Story (C. C.), 202; *Palmer* v. *New York*, 2 Sand. (N. Y.) 318; *Gilmore* v. *Lewis*, 12 Ohio, 281; *Bussier* v. *Pray*, 7 Serg. & Rawle, 447; see also *People* v. *Supervisors*, 1 Hill. (N. Y.) 362; *Wendell* v. *Brooklyn*, 29 Barb. 204; *Evans* v. *Trenton*, 4 Zabr. (N. J.) 764; but see *People* v. *Supervisors*, 12 Wend. 257; *Mallory* v. *Supervisors*, 2 Cowen, 531, *Ib.* 533; *Bright* v. *Supervisors*, 18 Johns. 242; *White* v. *Polk County*, 17 Iowa, 413; *Carroll* v. *St. Louis*, 12 Mo. 444), and for this reason it has been held that a promise to pay *extra* the sum fixed by By-law or regulation on the subject, is not binding, though greater services have been rendered than could have been legally exacted (*Hatch* v. *Mann*, 15 Wend. 44; *Batho* v. *Salter*, Latch, 54; *Lane* v. *Sewell*, 1 Chit. 175; *Dew* v. *Parsons*, *Ib.* 295; *Morris* v. *Burdett*, 1 Camp. 218, 3 *Bilke* v. *Havelock*, 3 Camp. 374; *Callagan* v. *Hallett*, 1 Caines. (N. Y.) 104; *Preston* v. *Bacon*, 4 Conn. 471; *Shattuck* v. *Woods*, 1 Pick. 175; *Bussier* v. *Pray*, 7 Serg. & Rawle. 447; *Smith* v. *Smith*, 1 Bailey, 70; *Carroll* v. *Tyler*, 2 Har. & Gill. 54; *Debolt* v. *Cincinatti*, 7 Ohio St. 237; *Pilie* v. *New Orleans*, 19 La. An. 273), and, indeed, in the interest of the public the rule has been carried so far as to prevent a Municipal officer recovering a reward for a service embraced within his official duties, such as the capture of a thief by a Constable. (*Gilmore* v. *Lewis*, 12 Ohio, 281; *Pool* v.

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By-law of the Council, and no Municipal Council shall assume to make any appointment to office, or any arrangement for the discharge of the duties thereof, by tender, or to applicants at the lowest remuneration. (*u*) 29-30 V. c. 51, s. 176.

Mode of appointment.

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*Boston*, 5 Cush. 219.) Salaries, when voted, should be given as salaries, and not as acts of grace or mere rewards for merit. (*In re McLean and Cornwall*, 31 U. C. Q. B. 314; *Heslep* v. *Sacramento*, 2 Cal. 580; *Smith* v. *Commonwealth*, 41 Pa. St. 335; *Devoy* v. *New York*, 39 Barb. 169; *Bladen* v. *Philadelphia*, 60 Pa. St. 464; *Philadelphia* v. *Given*, *Ib.* 136.) By-laws fixing salaries are not, *per se*, to be looked upon as contracts. (*Commonwealth* v. *Bacon*, 6 Serg. & Rawle. 322; *Barker* v. *Pittsburg*, 4 Pa. St. 49; *University* v. *Walden*, 15 Ala. 655; *Carr* v. *St. Louis*, 9 Mo. 190; *Commonwealth* v. *Mann*, 5 W. & S. (Pa.) 418; *Madison* v. *Kelso*, 32 Ind. 79; *Smith* v. *County*, 2 Par. (Pa.) 293; *Conner* v. *New York*, 1 Seld. 285; *Warner* v. *People*, 2 Denio. 272; *Iowa* v. *Foster*, 10 Iowa, 189; *Waldraven* v. *Memphis*, 4 Coldw. (Tenn.) 431; *Hoboken* v. *Gear*, 3 Dutch. (N. J.) 265; but see *Chase* v. *Lowell*, 7 Gray, 33; *Caverley* v. *Lowell*, 1 Allen (Mass.) 289; *Hiestand* v. *New Orleans*, 14 La. An. 330.) The Corporation may indemnify its own officers in matters in which the Corporation is interested. (*Pike* v. *Middleton*, 12 N. H. 278; *Briggs* v. *Whipple*, 6 Vt. 95; *Bancroft* v. *Lynnfield*, 18 Pick. 566; *Babbitt* v. *Savoy*, 3 Cush. 530; *Nelson* v. *Milford*, 7 Pick. 18; *Hasdell* v. *Hancock*, 3 Gray, 526; *Page* v. *Frankford*, 9 Greenl. 115; *Baker* v. *Windham*, 3 Maine, 74.) It is otherwise where the Corporation is not interested or concerned in the matter involved. (*Halstead* v. *New York*, 3 Comst. 430; *Morris* v. *People*, 3 Denio. 381; *People* v. *Lawrence*, 6 Hill. 244; *Bank* v. *Supervisors*, 5 Denio. 517; *Merrill* v. *Plamfield*, 45 N. H. 126; *Vincent* v. *Nantucket*, 12 Cush. 103; *Pike* v. *Middleton*, 12 N. H. 281.) An indemnity to an officer for *lawful acts* gives him no claim for compensation against the consequences of unlawful acts. (*Imrie* v. *Mariposa*, 22 U.C.C.P. 367.) An agreement by a Corporation with one of its officers for an increase of the salary of an office retained by him as compensation for the loss of an office of which he was deprived, is not binding unless under the seal of the Corporation. (*The Queen* v. *Stamford*, 6 Q. B. 433; see also *Cope* v. *Thames, &c., Dock and Railroad Company*, 3 Ex. 841.) So the appointment of a Corporation Solicitor should be under the Corporation seal. (*Arnold* v. *Poole*, 4 M. & G. 860.) A Town Clerk, if a solicitor, may have a lien on papers of the Corporation, with respect to which he has done work as an attorney or solicitor. (*The King* v. *Sankey*, 5 A. & E. 423.)

(*u*) The lowest tender is not always the most satisfactory for acceptance; and so much has this been found the case in the management of Municipal affairs, that the Legislature has been compelled to interfere, and make the declaration that "*No* Municipal Council *shall assume* to make *any* appointment to office, or *any arrangement* for the discharge of the duties thereof, by tender," &c. Poor pay, poor service, is generally the rule. Good servants are deserving of good pay; and good pay to good servants will, in the long run, be found to be true economy.

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Tenure of office.

Duties.

**220.** All officers appointed by a Council shall hold office until removed by the Council, (*a*) and shall, in addition to the duties assigned to them in this Act, perform all other duties required of them by any other statute, or by the By-laws of the Council. (*b*) 39-30 V. c. 51, s. 177.

A gratuity may be given in certain cases

**221.** Any Municipal Council, other than a Provisional Council, may grant to any officer who has been in the service of the Municipality for at least twenty years, and who has, while in such service, become incapable through old age of efficiently discharging the duties of his office, a sum not exceeding his aggregate salary or other remuneration for the last three years of his service, as a gratuity, upon his removal or resignation. (*c*) *New.*

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(*a*) This section applies to all officers appointed by the Council, no matter what their rank, condition or duties. Their tenure is in effect during the pleasure of the Council. The declaration that they are to hold office "until removed by the Council," impliedly authorises the Council to remove them at any time—in other words, at the pleasure of the Council. Unless, at all events, there be an appointment at a yearly salary under the corporate seal, or other appointment from which a yearly hiring must be inferred, there will be no holding except during the pleasure of the Council. (See *In re Macpherson and Beeman*, 17 U. C. Q. B. 99; *Beverley* v. *Barton*, 10 U. C. C. P. 178; *Broughton* v. *Brantford*. 19 U. C. C. P. 434; see further, *Hammond* v. *McLay*, 28 U. C. Q. B. 463.) A person, therefore, who enters into the employment of a Municipal Corporation, must be taken to do so with the fullest knowledge of his dependence on the pleasure either of the present or every future Council. (*Hickey* v. *Renfrew*, 20 U. C. C. P. 429.) In such a case it is in the power of the Council to remove without notice or hearing. (See *Bagg's Case*, 11 Coke, 98 (*b*); *The King* v. *Coventry*, 1 Ld. Rayd. 391; *Gaskins' Case*, 8 T. R. 209; *The King* v. *Oxon*, 2 Salk. 428; *The King* v. *Mayor, &c.*, 1 Lev. 291; *The King* v. *Andover*, 1 Ld. Rayd. 710; *Field* v. *Commonwealth*, 32 Pa. St, 478; *Ex parte Hennen*, 13 Pet. U. S. 230; *Hoboken* v. *Gear*, 3 Dutch. 265; *Madison* v. *Kelso*, 32 Ind. 79; *Stadler* v. *Detroit*, 13 Mich. 346.)

(*b*) This provision is made for a twofold purpose:

1. To prevent the discharge of sureties by the imposition of additional duties. (See note *r* to sec. 195.)

2. To prevent claims being made or sustained for extra pay. (See note *t* to sec. 219.)

(*c*) As Municipal officers hold office until removed (sec. 220), a removal may be had for any cause, or without cause. (See note *a* to sec. 220.) If the power of removal were only for cause, old age would not be good cause. (Bac. Abr. Corp. E. 9; *Hazard's Case*, 2 Rolle, 11.) But as the holding is different, an old servant might be dismissed simply because old and worn out in the service. In such a case, before the passing of the present Act, there was no power to grant a gratuity. (See note *r* to sec. 219.) The policy of enabling Municipal Corporations to make gratuities to servants is a

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# PART VI.

## GENERAL PROVISIONS APPLICABLE TO ALL MUNICIPALITIES.

TITLE I.—GENERAL JURISDICTION OF COUNCILS.
TITLE II.—RESPECTING BY-LAWS.
TITLE III.—RESPECTING FINANCE.
TITLE IV.—ARBITRATION.
TITLE V.—DEBENTURES AND OTHER INSTRUMENTS.
TITLE VI.—ADMINISTRATION OF JUSTICE AND JUDICIAL PROCEEDINGS.

## TITLE I.—GENERAL JURISDICTION OF COUNCILS.

### DIVISION I.—NATURE AND EXTENT.

*Confined to Municipality. Sec. 222.*
*General Regulations. Sec. 223.*
*May not grant Monopolies. Sec. 224.*
*Except as to Ferries. Sec. 225.*

**222.** The jurisdiction of every Council (*d*) shall be confined to the Municipality the Council represents, except

Jurisdiction of council.

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doubtful one. This section is merely experimental, and the power intended to be conferred by it can only be exercised in the case of an officer—

1. Who has been in the service of the Municipality for at least twenty years;

2. And who has, while in such service, become incapable, through old age, of efficiently discharging the duties of the office.

Service for any period less than twenty years, or incapacity from any other cause than old age, gives no right to the exercise of the power. The amount of the gratuity, which is to be paid in bulk, must be a sum "not exceeding his aggregate salary, or other remuneration, for the last three years." The gratuity is only to be paid on removal or resignation. The decision as to a gratuity, when made under the circumstances and within the limits prescribed, will not be subject to be reviewed by any Court. (*Re The Queen* v. *Sandwich*, 2 Q. B. 895, s. c. *In Error*, 10 Q. B. 563.) There is a distinction between a gratuity and annuity. See *Gibson* v. *East India Co.* 5 Bing. N. C. 262; *Clarke* v. *Imperial Gas Co.*, 4 B. & Ad. 315; *Innes* v. *East India Co.* 17 C. B. 351; *Marchant* v. *Lee Conservancy Board*, L. R. 8 Ex. 290.

(*d*) The word "jurisdiction" is here used in the sense of power. Municipal Corporations are the creatures of the Legislature. "They can exercise no powers but those which are conferred upon them by the Act under which they are constituted, or such as are necessary to the exercise of their corporate powers, the performance of their corporate duties, and the accomplishment of the purpose of their association. This principle is derived from the nature of Corporations, the mode in which they are organized, and in which their affairs must be conducted. In aggregate Corporations, as a general



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where authority beyond the same is expressly given, (*e*) and

rule, the act and will of the majority is deemed in law the act and will of the whole, or as the act of one Corporate body; the consequence is that a minority must be bound not only without but against their consent. Such an obligation may extend to every onerous duty, to pay money to an unlimited amount, to perform services, to surrender lands and the like. It is obvious, therefore, that if this liability were to extend to *unlimited* and *indefinite* objects, the citizen, by being a member of a Corporation, might be deprived of his most valuable personal rights and liberties. The security against this danger is in a steady adherence to the principle stated, viz., that Corporations can only exercise their power over their respective members for the accomplishment of limited and defined objects." (*Per* Shaw, C. J., in *Spaulding* v. *Lowell*, 23 Pick. R. 71.) See further, *Bangs* v. *Snow*, 1 Mass. 181; *Willard* v. *Newburyport*, 12 Pick. 227; *Stetson* v. *Kempton*, 13 Mass. 272; *Keyes* v. *Westford*, 17 Pick. 273; *Commonwealth* v. *Turner*, 1 Cush. 493; *Coolly* v. *Granville*, 10 Cush. 56; *Merriam* v. *Moody*, 25 Iowa, 163; *Lafayette* v. *Cox*, 5 Ind. 38; *Minturn* v. *Larue*, 23 How. 435; *Pain* v. *Spratley*, 5 Kansas, 525; *Vincent* v. *Nantucket*, 12 Cush. 103; *Commissioners* v. *Mighels*, 7 Ohio St. 109; *Gallia Co.* v. *Holcomb*, *Ib.* 232; *Fitch* v. *Pinckard*, 4 Scam. 78; *Caldwell* v. *Alton*, 33 Ill. 416; *Trustees* v. *McConnell*, 12 Ill. 140; *State* v. *Mayor*, 5 Port. (Ala.) 279; *State Bank* v. *Orleans Nav. Co.*, 3 La. An. 294; *Head* v. *Insurance Co.*, 2 Cranch. 168; *De Russey* v. *Davis*, 13 La. An. 468; *People* v. *Bank*, 1 Doug. (Mich.) 282; *City Council* v. *Plank Road Co.*, 31 Ala. 76; *Ex parte Burnett*, 30 Ala. 461; *Le Conteulx* v. *Buffalo*, 33 N. Y. 333; *People* v. *Railroad Co.*, 12 Mich. 389; *Petersburg* v. *Metzker*, 21 Ill. 205; *New London* v. *Brainard*, 22 Conn. 552; *Hodge* v. *Buffalo*, 2 Denio, 110; *Mayor* v. *Yuille*, 3 Ala. 137; *Harris* v. *Intendant*, 28 Ala. 577; *Intendant* v. *Chandler*, 6 Ala. 899; *Clark* v. *Davenport*, 14 Iowa, 495; *Nichol* v. *Mayor*, &c., 9 Humph. 252; *Leonard* v. *Canton*, 35 Miss. 189; *Douglass* v. *Placerville*, 18 Cal. 643; *Argenti* v. *San Francisco*, 16 Cal. 255; *Wallace* v. *St. Jose*, 29 Cal. 180; *Collins* v. *Hatch*, 18 Ohio, 523; *Willard* v. *Killingworth*, 8 Conn. 247; *Kyle* v. *Malin*, 8 Ind. 34. See further, note *k* to sec. 7.

(*e*) A Municipality, whether a County, City, Township or Village, is a locality; and the Municipal Council is the governing body of that locality. Beyond the limits of the locality the Council has not in general any authority whatever. For this reason, the section begins by declaring that "the jurisdiction of every Council shall be confined to the Municipality the Council represents." (See note *t* to sec. 12, and note *j* to sec. 16.) Thus a Township Council has no power to impose any regulations on a Township of which it is not the Council. So of every other local Municipality. The proposition is so reasonable and so self-evident that no authorities are needed to sustain it. Nor can one Municipal Council, in general, benefit another Municipality at the expense of its own; for instance, build a school-house in a Township of which it is not the representative. This too is an unmistakable proposition, but as between Townships and Counties, not so clear as the preceding. For many purposes a Township is within the jurisdiction of the Council of the County in which it is situate, and is subject to be taxed for County purposes by the County Council; but the right of a Township Council to tax

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the powers of the Council shall be exercised by By-law (*f*) when not otherwise authorized or provided for. (*g*) 29-30 V. c. 51, s. 190.

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itself in aid of the County is limited. It would seem that a Township Council has no right voluntarily to pass a By-law imposing a rate in aid of a County rate. (*Fletcher* v. *Euphrasia*, 13 U. C. Q. B. 129.) So the right of a Township Council to pass a By-law in aid of the cost of a school-house ordered by the County Council is doubtful. (*Kennedy* v. *Sandwich*, 9 U. C. Q. B. 326.) A Township By-law was quashed as to so much of it as related to the raising of a sum of money to defray the demands of the County Council on the Township, and as an equivalent to the Government school grant, &c., it not appearing on the face of the By-law that it was directed to the purpose of meeting a deficiency, nor even that there was any, if that would have authorized the By-law. (*Fletcher* v. *Euphrasia*, 13 U. C. Q. B. 129.)

(*f*) The jurisdiction of every Council is not only to be confined to the Municipality the Council represents, but is to be exercised, when not otherwise provided for, by By-law. When a Corporation is duly erected, the law tacitly annexes to it the power of making By-laws or private statutes. This power is included in every Act of Incorporation; for, as is quaintly observed by Blackstone, "as natural reason is given to the natural body for the governing it, so By-laws or statutes are a sort of political reason to govern the body politic." (1 Bl. Com. 476.) Though the power to make By-laws is unquestionably an incident of every Corporation, it is rarely left to implication; but is usually, as in the present case, conferred by the express terms of the Act of Parliament. According to Lord Coke, the word "by" or "bye" signifies a habitation. (Willcock on Municipal Corporations, 73.) Hence *By*-law or *Bye*-law may be defined as being the law of the inhabitants of some Corporate place or district, as distinguished from the general law of the Province in which the Municipality is situate. A By-law is a rule obligatory over a particular district, not being at variance with the general laws, and being reasonably adapted to the purposes of the Corporation. (*Gosling* v. *Veley et al*, 19 L. J. Q. B. N. S. 135.) A By-law has the same force, within the limits of the Municipality, and with respect to the persons upon whom it lawfully operates, as an Act of Parliament has upon the people at large. (*Hopkins* v. *Swansea*, 4 M. & W. 621; see also *The Queen* v. *Osler*, 32 U. C. Q. B. 324; *Heeland* v. *Lowell*, 3 Allen, 407; *Presbyterian Church* v. *New York*, 5 Cow. 538; *St. Louis* v. *Boffinger*, 19 Mo. 13; *McDermott* v. *Board of Police*, 5 Abb. Pr. 422; *Taylor* v. *Carondelet*, 22 Mo. 105; *Baker* v. *Portland*, 10 Am. Law Reg. N. S. 559.) The Courts, upon general principles, recognize judicially what Municipal Councils are competent to do, and hold that it is not necessary for them to recite in a By-law all that is requisite to show that they have proceeded regularly in passing it. (*Grierson* v. *Ontario*, 9 U. C. Q. B. 623; *Fisher* v. *Vaughan*, 10 U. C. Q. B. 492; see further, *The King* v. *Harrison*, 3 Burr. 1328; *Roman Catholic Church* v. *Baltimore*, 6 Gill (Md.), 394; *Stuyvesant* v. *New York*, 7 Cow. 588.)

(*g*) It is a common belief that a Municipal body can do by resolution whatever may be done by By-law. Nothing can be more erroneous, or more tend to the insecurity of Municipal govern-

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General power to make regulations;

To repeal, alter, &c., by-laws.

**223.** Every Council may make regulations (*h*) not specifically provided for by this Act, and not contrary to law, for governing the proceedings of the Council, the conduct of its members, the appointing or calling of special meetings of the Council, and generally such other regulations as the good of the inhabitants of the Municipality requires, (*i*) and may

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ment. (See *The Queen ex rel. Allemaing* v. *Zoeger*, 1 Prac. R. 219.) The general principle known to the common law is that a Corporation can only act through its seal, and the express declaration of the Legislature here is that "the powers of the Council *shall* be exercised by By-law when *not otherwise* authorized or provided for." But among people generally, and among that class composing Municipal Councils particularly, there is a dislike of formality, and, in consequence, the too frequent abandonment of By-laws for mere orders or resolutions. Now, the proceedings of a Municipal Council that may be lawfully had by order or resolution, are comparatively few and unimportant. A By-law should not be dispensed with unless in a very clear case. In fact, whenever a Municipal Council is in doubt whether it can or cannot do a particular thing by order or resolution, it would be much safer and wiser, owing to the doubt, to use a By-law. Were this, as a rule, understood and followed, it would prevent much confusion in the administration of Municipal affairs. Another common but erroneous belief is, that a Municipal Council can by order or resolution do that which, if done through a By-law, would be illegal. This it cannot do. No Municipal Council can do that informally which it has no power to do directly and formally. (*Daniels* v. *Burford*, 10 U. C. Q. B. 478.) A By-law, order or resolution, which revives an illegal By-law, is of course itself illegal. (*Canada Company* v. *Oxford*, 9 U. C. Q. B. 567.) An order or resolution duly signed and sealed is virtually a By-law; but many orders and resolutions pass by mere vote, without being thus authenticated. The Municipal rules of proceeding generally require more formal steps to be taken in passing a By-law than in adopting an order or resolution. Municipal Corporations, however, may become liable as wrong-doers for things done by direction of the Councils without By-laws. (*Croft* v. *Peterborough*, 5 U.C.C.P. 35; *Nevill* v. *Ross*, 22 U.C.C.P. 487.) The power to make By-laws necessarily supposes the power to enforce them by pecuniary penalties, competent and proportionable to the offence. (See sec. 372, sub. 11.) In construing a By-law, &c., the Court will look at the whole of it, to ascertain its meaning, and construe one part with another or other parts, so as, if possible, to give full effect to the whole. (*In re Cameron and East Nissouri*, 13 U. C. Q. B. 190.)

(*h*) The word "regulations" may be used in a general sense as laws, or in a particular sense as informal resolutions. (See *In re Snell and Belleville*, 30 U. C. Q. B. 81.) It is not clear in which sense the word is here used.

(*i*) The regulations may be for the following purposes:

1. The governing of the proceedings of the Council.
2. The conduct of its members.
3. Appointing special meetings of the Council.

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4. For calling such meetings.

And generally such other regulations as the good of the inhabitants requires.

*Provided* the regulations be not contrary to law.

It is a principle applicable to every regulation of a Municipal Corporation, first, that it be not contrary to the Municipal Acts or law authorizing the formation of the Corporation, and, secondly, that it be not contrary to the general law of the land.

*First*—The regulations of the Municipal Council must not be inconsistent with the Municipal Acts, for these Acts create it an artificial being, impart to it its power, designate its object, and prescribe its mode of operation: they are in short the constitution of the Corporation. Hence all laws in contravention of them are void. "The true test of all By-laws," says Mr. Justice Wilmot, "is the intention of the Crown in granting the charter, and the apparent good of the Corporation." (*The King* v. *Spencer*, 3 Burr. 1838.) So of a Municipal Council; it may be said that the true test of a By-law is the intention of the Legislature in incorporating the Council, and the apparent good of the Municipality affected. Mr. Justice Yates, in the same case, said, "Corporations cannot make By-laws contrary to their constitution. If they do so, they act without authority." (*Ib.* at p. 1839; but see "The Case of Corporations," 4 Co. R. 77, 78.) As transcending the Municipal Acts, By-Laws creating a new office, imposing an oath of office where none is required by the Acts, giving a vote to a class of persons not entitled to vote by law, qualifying persons to be candidates not qualified by the Acts, giving a casting vote to an officer not entitled to it by the Acts, restricting or extending the right of admission or eligibility to office, altering the prescribed mode of election, or imposing new or additional tests or qualifications either on members or voters, would be void. (See Angell & Ames on Corporations, 345; see also *The King* v. *Miller*, 6 T. R. 277; *The King* v. *Barber Surgeons*, 1 Ld. Rayd. 584; *State* v. *Bruder*, 38 Mo. 450; *Thompson* v. *Carroll*, 22 How. 422; *Andrews* v. *Insurance Co.*, 37 Maine, 256.)

*Second.*—The law of a country being as well a rule for the proceedings of Corporations as for the conduct of individuals, all By-laws contrary to the common or statute law of the country are void. "All By-laws," says Hobart, "must ever be subject to the general law of the realm, and subordinate to it." (*Norris* v. *Staps*, Hob. 210.) For this reason, a By-law "impairing the obligation of contracts," or taking "private property for public uses without just compensation," would be void. (Angell & Ames on Corporations, 333.) But where a statute authorized the Corporation of a City to make By-laws "regulating," or, if necessary, "preventing," the interment of the dead within the city, it was held that though that Corporation had granted lands for the purpose of interment, and had covenanted that they should be quietly enjoyed for that purpose, yet that the Corporation was not thereby estopped from passing a By-law forbidding such interment, under a penalty. (*Ib.*) The case was decided on the ground that the legislative power of the Corporation over this subject was delegated to it *for the good of the City*, and

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repeal, alter and amend its By-laws, save as by this Act restricted. (*k*) 29-30 V. c. 51, s. 191.

Granting monopolies prohibited.

**224.** No Council shall have the power to give any person an exclusive right of exercising within the Municipality any

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that the By-law passed was be to regarded as if passed by the Legislature; that no person is entitled to use his property so as to injure another, and that no covenant could give him power so to do, even though made with the Corporation; since, as tending to control and embarrass the exercize of its important powers as a *local Legislature*, the covenant, when it came in competition with them, must give way or was repealed. (*Ib.*) The legislative power of a Corporation is not only restricted by the statute law, but by the general principles and policy of the common law. Indeed, whenever a By-law seeks to alter a well-settled and fundamental principle of the common law, or to establish a rule interfering with the rights or endangering the security of individuals or the public, a statute or other special authority emanating from the creating power must be shown to legalize it, either expressly or by implication. It is upon this principle that, though many By-laws passed by the ancient Municipal Corporations in England for the *regulation* of trade have been adjudged good, yet many were adjudged void as in *restraint* of trade and an oppression of the subject. (See sec. 224 and notes; see further, *Collins* v. *Hatch*, 18 Ohio, 523; *Roberts* v. *Ogle*, 30 Ill. 459; *Adams* v. *Mayor*, 29 Geo. 56; *Sill* v. *Corning*, 1 E. P. Smith, (N.Y.) 297; *Cincinnati* v. *Gwynne*, 10 Ohio, 192; *Wood* v. *Brooklyn*, 14 Barb. 425; *Markle* v. *Akron*, 14 Ohio, 586; *Huddleston* v. *Ruffin*, 6 Ohio St. 604; *Rogers* v. *Jones*, 1 Wend. 237; *Marietta* v. *Fearing*, 4 Ohio, 427.)

(*k*) It need hardly be mentioned that the Municipal body which has power to make has power to repeal By-laws; it being of the very nature of legislative power that, by timely changes in the rule it prescribes, it should be enabled to meet the exigencies of the occasion. (*The King* v. *Bird*, 13 East. 367; *Bloomer* v. *Stolley*, 5 McLean, 158.) Repeals cannot be made to operate retrospectively to the prejudice of vested rights. (*The King* v. *Ashwell*, 12 East. 22; *State* v. *City Clerk*, 7 Ohio St. 355; *Stoddard* v. *Gilman*, 22 Vt. 568; *Pond* v. *Negus et al*, 3 Mass. 230; *Maryland ex rel. McClellan* v. *Graves*, 19 Md. 351; *Bigelow* v. *Hillman et al*, 37 Maine, 52; *Reif* v. *Conner*, 5 Eng. (Ark.) 241; *Road in Augusta*, 17 Pa. St. 71); unless for the purpose of abating an actual nuisance, or something of that character. (*New Orleans* v. *St. Louis Church*, 11 La. An. 244; *Musgrove* v. *Catholic Church*, 10 La. An. 431.) The power does not extend to all By-laws. There are certain By-laws, such as those authorizing the issue of debentures, &c., upon the faith of which third persons act and change their circumstances, and from which the Municipality in general derives an immediate benefit—these being in the nature of securities, rather than ordinary regulations, cannot be repealed until the loan or debt arising thereout or dependent thereupon is satisfied. (Sec. 254.) Hence it is that in the section here annotated the power given is to repeal, alter or amend By-laws, is general, "save as is by this Act restricted." See further, *In re Cunningham* v. *Almonte*, 21 U. C. C. P. 459.)

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rade or calling, (*l*) or to impose a special tax on any person

(*l*) Monopolies are odious to the law. A monopoly is when the sale of any merchandize or commodity is restrained to one or to a certain number (11 Co. 86), and has three inseparable consequents—the increase of the price, the badness of the wares, the impoverishment of others. (*Ib.*) By statute 21 Jac. 2, all monopolies and all commissions, grants, licenses, &c., to any person, &c., for any sale, buying, selling, making, working, using of a thing, &c., are void. And any one grieved, &c., may have an action on the statute, and recover treble damages and double costs. So monopolies are contrary to Magna Charta. (2 Inst. 63.) By statute 38 Ed. 3, a merchant may freely deal in all manner of merchandize. The statute of 21 Jac. 2, does not extend to letters patent for inventions, &c. The first part of this section is simply a declaration of the common law. Whenever a By-law seeks to alter a well-settled and fundamental principle of the common law, or to establish a rule interfering with the rights of individuals or the public, the power to do so must come from plain and direct Legislative enactment.. (*Taylor* v. *Griswold*, 2 Green. (N. J.) 222.) But legal restraints, in the form of regulations, may be imposed upon the few for the benefit of the many. (*City Council* v. *Ahrens*, 4 Strob. S. Car. 241; *Charleston* v. *Baptist Church*, *Ib.* 306; *Peoria* v. *Calhoun*, 29 Ill. 317; *St. Paul* v. *Coulter*, 12 Minn. 41; see further, note to sub. 14 of sec. 372.) It is sometimes difficult to determine when a By-law is in restraint of trade, and when it is a mere regulation of trade. The former is illegal; the latter legal. The following have been held to be mere regulations and so valid: That no butcher or other person should, within the walls of the city, slaughter any beast, &c., to forfeit, &c. (*Pierce* v. *Bartrum*, Cowp. 269.) That no butcher or other person should keep any swine within the walls of the city, upon pain, &c. (*Ib.*) That no commoner should keep any sheep in the bounds below the weir, under the pain, &c. (*James* v. *Putney*, Cro. Car. 497.) That none of the Company of Silk Throwsters should have above such a number of spindles in one week. (*Freemantle* v. *The Company of Silk Throwsters*, 1 Lev. 229.) And *per* Cur. "This is not a monopoly, but a restraint of a monopoly, that none might ingross the whole trade, being rather to provide for an equality of trade, according to what is convenient and good." (*Ib.*) That no master of any boat, &c., from place to place, &c., should unload or send on shore any goods but by such persons as are of Company and Fellowship of Porters. (*Cuddon* v. *Eastwick*, 1 Salk. 192.) That no person should exercise the trade of a joiner unless free of the Company of Joiners. (*Warinel* v. *London*, 1 Str. 675; see also *Green* v. *Durham*, 1 Burr. 127; *The King* v. *Master, &c. of the Co. of Surgeons in London*, 2 *Ib.* 892; *The King* v. *Harrison*, 3 *Ib.* 1322.) That no drayman or brewer's servant should be abroad in the streets, with his dray or cart, after one of the clock in the afternoon between Michaelmas and Lady Day, and from thence after eleven in the forenoon, under the penalty, &c. (*Bosworth* v. *Hearne*, 2 Str. 1085; see further, *Shaw* v. *Pope*, 2 B. & Ad. 465.) That no person using the art of a butcher, and should inhabit and dwell within the city or suburbs thereof, or within two miles of the same city, should keep open any shop, or offer for sale any fresh meat, on the Lord's Day, commonly called Sunday. (*The Butchers' Company* v. *Morey*, 1 H. Bl. 370.) That

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exercising the same, (*m*) or to require a license to be taken for exercising the same, (*n*) unless authorized or required by

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no stranger or foreigner should use or exercise the craft or mystery of a taylor within the said city, except he should first be made free of the said city. (*Woolley et al* v. *Idle*, 4 Burr. 1951; see also *Bosworth* v. *Budgen*, 7 Mod. 459.) By-laws may, under certain circumstances, be passed exempting manufacturing establishments, in whole or in part, from taxation for a term of years. (See sec. 259.) The following have been held to be bad, as in restraint of trade: That no member should sell the barrel of any hand gun, &c., ready proved, to any person of the trade not a member in London, or within four miles thereof. (*The Master, &c. of Gunmakers, &c.* v. *Fell*, Willes. 384.) No member should strike his stamp or mark on the barrel of any person not a member of the Company, &c. (*Ib.*) That every person not being already free of the city, occupying, using or exercising, or who shall occupy, use or exercise the art, trade or mystery of a butcher within the said city or its liberties, shall take upon himself the freedom of the Company of Butchers, and that if any person or persons (except such as are already free, &c.) shall use the trade of a butcher, not being free of this Company, he shall pay, &c. (*Harrison* v. *Godman*, 1 Burr. 12. So as "to persons using the occupation of music and dancing." (*Robinson* v. *Groscourt*, 5 Mod. 104.) That no person should erect any booth, for the purpose of any show or public entertainment, in any public place within the borough, without license from the Mayor, which license should not be given at or for any other time than during the annual fairs, if three inhabitant householders, residing within 100 yards of the place intended to be used, should have previously memorialized the Mayor to withhold such license, &c. (*Elwood* v. *Bulloch*, 6 Q. B. 383.) Where a particular building was designated for the slaughtering of all animals intended for sale or consumption in the city, the owners of which were granted the exclusive right, for a specified period, to have all such animals slaughtered at their establishment, the By-law was held bad. (*Chicago* v. *Rumpff*, 45 Ill. 90.) So where it was provided that those only to whom licenses were granted should have slaughter-houses within the city. (*Re Nash and McCracken*, 33 U.C. Q.B. 181.)

(*m*) Taxes must be general. A tax levied on a particular occupation is therefore bad. (*Savannah* v. *Hartridge*, 8 Ga. 23; *Linning* v. *Charleston*, 1 McCord, 345.) A regulation "that any person wishing to sell fresh meat in quantities less than a quarter in a shop or stall, in Coleman or in Baldwin Wards, shall, before the first of March in each year, apply, in writing, to the Chairman of the Market Committee, stating the annual sum he or she will pay in addition to the sum of $40 to obtain a certificate from the proper authority, authorizing the holder of the certificate to expose for sale and sell fresh meat in one stall in Coleman Ward, or in Baldwin Ward, for one year, from first of March of the year in which the certificate is obtained," is bad. (*In re Snell and Belleville*, 30 U. C. Q. B. 93.)

(*n*) The power to license carries with it the right to require payment of a reasonable sum as a consideration for the license, but such power must not be so used as to be the imposition of a tax. (*State* v. *Herod*, 29 Iowa, 123.) The difficulty is to draw the line. "We

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Statute so to do; (*o*) but the Council may direct a fee, not exceeding one dollar, to be paid to the proper officer for a certificate of compliance with any regulations in regard to such trade or calling. (*p*) 29-30 V. c. 51, s. 220. Proviso.

**225.** A Council may grant exclusive privileges in any ferry which may be vested in the Corporation (*q*) represented Exception as to certain ferries.

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cannot assent to the position that if the sum required for a license exceeds the expense of issuing it, the Act transcends the licensing power and imposes a tax." By such a theory the statute would be shorn of all its efficiency. (*Per* Paine, J., in *Tenney* v. *Lenz*, 16 Wis. 566; see also, *Carter* v. *Dow*, *Ib.* 298; *Fire Department* v. *Helfenstein*, *Ib.* 136; *Ash* v. *People*, 11 Mich. 347; *Chilvers* v. *People*, *Ib.*, 43.) By-laws requiring a license fee so heavy as to amount to a prohibition are to be considered in restraint of trade. *Mobile* v. *Yuille*, 3 Ala. 137.)

(*o*) The import of these words deserves special attention. The meaning is that in the absence of some statute authorizing or requiring the creation of a monopoly, the imposition of a special tax on any person exercising a trade or calling, or requiring a license to be taken for the exercise of the same, no Council shall have the power to do any of the things mentioned. If there be such a statute it must be plain in its terms, and direct in its language. (See note *l* to this section.)

(*p*) The issue of such a certificate as here mentioned cannot lead to any abuse, for the fee to be paid for it is not "to exceed one dollar." It is not said for what purpose it is to be issued, or what effect is to be given to it when issued. It is apparently a nondescript sort of thing that will not do much harm to the receiver or much good to the issuer. (See note *n* to this section.)

(*q*) A ferry is a franchise which cannot be set up without the license of the Crown, or the authority of some body corporate or person empowered by the Crown or the Legislature to grant the same. (Com. Dig. "Piscary." B.) Where the Legislature has conferred upon a Municipal Corporation its whole power to establish and regulate ferries within the corporate limits, then and then only can the Corporation grant exclusive privileges of ferry. (*East Hartford* v. *Hartford Bridge Co.*, 10 How. U. S. 511.) The exclusive power must appear by express words or necessary inference. Mere power to establish and regulate ferries within the corporate limits would not, it seems, be sufficient to enable the Corporation to confer on others an exclusive right of ferry. (*Harrison* v. *State*, 9 Mo. 526; *Minturn* v. *Larue*, 23 How. U. S. 435; *McEwen* v. *Taylor*, 4 G. Greene (Iowa) 532.) The grant by the Legislature is, in the interest of the public, one which may if necessary be repealed or altered. (*East Hartford* v. *Hartford Bridge Co.*, 10 How. U. S. 511; see also *Charles River Bridge* v. *Warren Bridge*, 11 Pet. U. S. 420; *Hartford Bridge Co.* v. *Ferry Co.*, 29 Conn. 210; *Kerby* v. *Lewis*, 6 O. S. 207; *The Queen* v. *Davenport*, 16 U. C. Q. B. 411.) As to the right of a Municipal Corporation in the public interest to derogate from its own grant of a ferry, and other points as to the right of Municipal Corporations as to ferries, see *Fay, Petitioner*, 15 Pick. 243; *Fanning* v.

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by such Council, (*r*) other than a ferry between a Province of the Dominion of Canada and any British or foreign country, or between two Provinces of the Dominion. (*s*) 29-30 V. c. 51, s. 221. *Vide* B. N. America Act, s. 91, sub. 13.

## TITLE II.—RESPECTING BY-LAWS.

DIVISION I.—AUTHENTICATION OF.
DIVISION II.—OBJECTIONS BY RATEPAYERS.
DIVISION III.—VOTING ON BY ELECTORS.
DIVISION IV.—CONFIRMATION OF.
DIVISION V.—QUASHING.
DIVISION VI.—BY-LAWS CREATING DEBTS.
DIVISION VII.—BY-LAWS RESPECTING YEARLY RATES.
DIVISION VIII.—ANTICIPATORY APPROPRIATIONS.

### DIVISION I.—AUTHENTICATION OF.

*Original and Copies. Sec. 226, 227.*
*Proof of Facts for Governor. Sec. 228.*

How by-laws to be authenticated.

**226.** Every By-law shall be under the seal of the Corporation and shall be signed by the head of the Corporation, or by the person presiding at the meeting at which the By-law has been passed, and by the Clerk of the Corporation. (*a*) 29-30 V. c. 51, s. 192.

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*Gregoire*, 16 How. (U. S.) 524; *East Hartford* v. *Hartford Bridge Co.*, 16 Conn. 149, 17 Conn. 79, 10 How. U.S. 511; *Chilvers* v. *People*, 11 Mich. 43; *O'Neill* v. *Police Jury*, 21 La. An. 586; *Aiken* v. *Western R. R. Co*, 20 N. Y. 370; *Benson* v. *New York*, 10 Barb. 223; *Harris* v. *Nesbit*, 24 Ala. 398; *United States* v. *Fanning*, Morris (Iowa) 348; *Harris* v. *Nesbit*, 24 Ala. 398; *Conner* v. *New Albany*, 1 Blackf. (Ind.) 43; *City* v. *Ferry Co.* 27 Ind. 100; *Shallcross* v. *Jeffersonville*, 26 Ind. 193; *Duckwall* v. *New Albany*, 25 Ind. 283; *Harrison* v. *State*, 9 Mo. 526.) By-laws as to Ferries require the sanction of the Governor in Council. (See note *w* to sub. 4 of sec. 383.)

(*r*) See note *k* to sec. 7.

(*s*) "Ferries between a Province and any British or foreign country, or between two Provinces," are subject to the exclusive legislative authority of the Parliament of Canada. (B. N. Act. s. 91, sub. 13.)

(*a*) The formalities prescribed in this section are indispensable. The By-law must be—

1. Under the seal of the Corporation.

2. Signed by the head of the Corporation.

*Or* by the person who presided at the meeting at which the By-law passed.

3. Signed by the Clerk of the Corporation.

Unless the By-law be sealed it is not a legal By-law. (*In re Croft and Brooke*, 17 U. C. Q. B. 269; see also, *In re Mottashed and*

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**227.** A copy of any By-law written or printed without erasure or interlineation, and under the seal of the Corporation, and certified to be a true copy by the Clerk, and by any member of the Council, shall be deemed authentic, and be received in evidence in any Court of Justice without proof of the seal or signatures, (*b*) unless it is specially pleaded or alleged that the seal, or one or both of the signatures have been forged. 29-30 V. c. 51, s. 193. Proof of.

**228.** The facts required by this Act to be recited in any By-law which requires the approval of the Governor in By-laws requiring assent of the Governor.

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*Prince Edward*, 30 U. C. Q. B. 74.) Signature under this section would seem to be as essential as seal. (See *Blanchard* v. *Bissell*, 11 Ohio St. 96; see also, *State* v. *Newark*, 1 Dutch N. J. 399.) Where the head of the Corporation, either from caprice or obstinacy, refuses to do his duty in passing a By-law which is required for the benefit of his township or a part of it, it would seem that the remaining members of the Council would be justified in requiring another member of the Council to take the chair, and do that which the head of the Council perversely refuses to do. (*Preston and Manvers*, 21 U. C. Q. B. 626; see further, *Brock* v. *Toronto and Nipissing Railway Co.* 17 Grant, 425.) No action can be sustained, as for a breach of duty, against the head of a Municipal Corporation for not applying the seal to make a contract between the Corporation and the plaintiff, founded upon a refusal, which, if there had been a previous contract, would have constituted a breach of it. There cannot be a remedy against the head of the Corporation equivalent to a remedy on the contract against the Corporation itself, had the contract been duly made, so as to make a valid contract where there is none. (*Fair* v. *Moore*, 3 U. C. C. P. 484.) By-laws of Police Commissioners need not be sealed. (See sec. 336.)

(*b*) In the absence of some provision of this kind, it would in general be necessary, in order to prove a By-law, to produce and prove the original By-law. (See *Re Thetford*, 12 Vin. Abr. 90; *Lumbard* v. *Aldrich*, 8 N. H. 31; *Stevens* v. *Chicago*, 48 Ill. 498; *Moor* v. *Newfield*, 4 Greenl. 44; *Hallowell and Augusta Bank* v. *Hamlin*, 14 Mass. 178.)

A copy is, under this section, made evidence in any Court of Justice without proof of seal or signatures when

1. Without erasure or interlineation.
2. Under the seal of the Corporation.
3. And certified to be a true copy by the Clerk, and by any member of the Council.

On a motion to quash a By-law, order or resolution, it is only necessary to produce a copy, certified under the hand of the Clerk alone, and under the Corporate seal, together with an affidavit of the party applying, that the copy was received from the Clerk. (Sec. 240.) The latter section is framed for a special purpose, while the section here annotated is meant to provide generally for all cases. (*Per* Draper, C. J., in *In re The Board of School Trustees and Corporation of Sandwich*, 23 U. C. Q. B. 639.)

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Council, shall, before receiving such approval, be verified by solemn declaration, by the head of the Council, and by the Treasurer and Clerk thereof, and by such other persons and on such other evidence as, to the Governor in Council, satisfactorily proves the facts so recited; (*c*) or in case of the death or absence of any such Municipal officer, upon the declaration of any other member of the Council whose declaration the Governor in Council may accept. 29-30 V. c. 51, s. 197.

DIVISION II.—OBJECTIONS BY RATEPAYERS.

*When and how made. Sec. 229.*
*When Successful. Sec. 230.*

Opposition to by-laws.

**229.** In case any person rated on the Assessment Roll of any Municipality, or of any locality therein, objects to the passing of a By-law, the passing of which is to be preceded by the application of a certain number of the ratable inhabitants of such Municipality or place, (*d*) he shall, on

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(*c*) This section applies only to By-laws requiring "the approval of the Governor in Council."

To procure the approval, it is made necessary that—

1. The By-law be verified by solemn declaration.

2. The declaration be made by the head of the Council, the Chamberlain or Treasurer, and the Clerk of the Council.

3. *And* by such other *persons* and on such other *evidence* as, to the Governor in Council, satisfactorily proves the facts recited.

The Lieutenant-Governor acts, as it were, judicially in the matter. (See note *n* to sec. 120 of the Assessment Act.)

(*d*) The right to object does not extend to the passing of *all* By-laws, but only such as are "to be preceded by the application of a certain number of the ratable inhabitants of the Municipality or place." The right to attend for the purpose mentioned exists only "on petitioning the Council." The person so attending may raise all or any of the following objections:

1. That the necessary notice of the application for the By-law was not given.

2. That any of the signatures to the application are not genuine.

3. That some of the signatures were obtained upon incorrect statements.

4. That the proposed By-law is contrary to the wishes of the persons whose signatures were so obtained.

5. *And* that the remaining signatures do not amount to the number nor represent the amount of property necessary to the passing of the law.

*In re Montgomery and Raleigh*, 21 U. C. C. P. 394, where the application was to quash a drainage By-law, Gwynne, J., said, "We are

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petitioning the Council, be at liberty to attend in person, or by counsel or attorney, before the Council at the time at which the By-law is intended to be considered, or before a Committee of the Council appointed to hear evidence thereon, and may produce evidence that the necessary notice of the application for the By-law was not given, or that any of the signatures to the application are not genuine, or were obtained upon incorrect statements, and that the proposed By-law is contrary to the wishes of the persons whose signatures were so obtained, and that the remaining signatures do not amount to the number nor represent the amount of property necessary to the passing of the By-law. 29-30 V. c. 51, s. 194. How to be made.

**230.** If the Council is satisfied upon the evidence that the application for the By-law did not contain the names of a sufficient number of persons whose names were obtained without fraud and in good faith, and who represent the requisite amount of property, and are desirous of having the By-law passed, or if the Council is satisfied that the notice required by law was not duly given, the Council shall not pass the By-law. (*e*) 29-30 V. c. 51, s. 195. When by-laws shall not pass.

DIVISION III.—VOTING ON, BY ELECTORS.

*Proceedings in Voting. Sec. 231.*
*Who to Vote. Sec. 232, 233.*
*Freeholders. Sec. 232.*
*Leaseholders. Sec. 233.*
*Oath of Freeholder. Sec. 234.*
*Oath of Leaseholder. Sec. 235.*
*Council must pass when carried. Sec. 236.*

**231.** In case a By-law requires the assent of the electors If a by-law require the assent of the electors, mode of obtaining the same.

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not prepared to say, that if a Municipal Council, in violation of the apparent fact that a sufficient number to put the Council in motion had not petitioned, such fact being made apparent in the manner indicated in sections 194 and 195 (same as 229 and 230 of this Act) of the Municipal Institutions Act, should nevertheless proceed to pass a By-law imposing rates, that such a By-law could be sustaind upon a motion, showing these facts, made to quash it. But in the absence of all suggestion of fraud and all opposition to the By-law when before the Council, upon the ground taken, I think that a By-law which recites that a sufficient number had petitioned should be taken to be true, unless, at least, the recital be clearly established to be glaringly untrue, so as to afford a presumption of fraud in the proceedings of the Council." (See further, note *e* to sec. 230.)

(*e*) The By-law should in every case be passed subsequently to and consequent upon the presentation of the required petition praying

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of a Municipality before the final passing thereof, (*f*) the following proceedings shall be taken for ascertaining such assent, (*g*) except in cases otherwise provided for:

Time and place of voting shall be fixed by by-law.

(1.) The Council shall by the By-law fix the day, hour and place for taking the votes of the electors thereon, at every place in the Municipality at which the elections of the members of the Council or Councils therein are held, and shall also name a Returning Officer to take the votes at every such place, (*h*) and such day shall not be less than three nor more than five weeks after the first publication of the proposed By-law as herein provided for; (*i*) *Vide* 29-30 V. c. 51, s. 196, sub. 1.

Proposed by-law to be published.

(2.) The Council shall, before the final passing of the proposed By-law, publish a copy thereof in some public newspaper published within the Municipality, or if there is no such newspaper, in some public newspaper published nearest the Municipality, or in the County Town, the publication to be continued in at least one number of such paper

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the particular By-law to be passed, and after the fullest opportunity given to every ratepayer to be affected by the By-law to object to it being passed. (*Per* Gwynne, J., *In re Morrell and Toronto*, 22 U.C. C. P. 326; see further, note *d* to sec. 229.)

(*f*) By-laws for creating debts not payable in the same Municipal year are here notably intended. (See sec. 248 and notes thereto.)

(*g*) If the proceedings prescribed be not taken, or be not duly taken, the By-law may be held invalid. (See *Barnett* v. *Newark*, 28 Ill. 62; *Higley* v *Bunce*, 10 Conn. 567; *Conboy* v. *Iowa*, 2 Iowa 90; see also sec 241, at the end.)

(*h*) It has been held sufficient if the manner of ascertaining the assent of the electors be prescribed by a notice attached to the proposed By-law when published, though the Act says that it shall be determined by the By-law. (*Boulton* v. *Peterborough*, 16 U. C. Q. B. 380.)

(*i*) Where publication was required for four consecutive weeks, in some newspaper published weekly or oftener in the Municipality with a notice that, on some day within the week next after such four weeks, a poll would be demanded, and the first publication was on Thursday, 12th January, and Tuesday, 7th February, was appointed for the polling, it was held too soon. (*Coe* v. *Pickering*, 24 U. C. Q. B. 439; *In re Miles and Richmond*, 28 U. C. Q. B. 333.) Where it was required that the By-law should be published for the space of twenty days, in at least one newspaper, before it should go into effect, it was held that the By-law would go into effect twenty days after its publication in the first number of the newspaper. (*Hoboken* v. *Gear*, 3 Dutch. (N. J.) 265.)

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each week for three successive weeks, (*j*) and shall also put up a copy of the By-law at four or more of the most public

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(*j*) The publication is required to be made in some newspaper published within the Municipality, and if no such newspaper, then in some public newspaper published nearest the Municipality, or in a newspaper published in the County Town. The Municipality of Kingston proposed to take £7,500 in a road company, and published a By-law (No. 6) to authorize a loan, containing the usual recitals, imposing a rate, and directing the issue of debentures, &c. When the By-law came on for discussion, a clause was added reducing the sum to £5,000, and directing the rates to be altered accordingly, and, thus amended, it passed in June, 1854. In December following another By-law was passed (No. 8), providing for the issuing of debentures (authorized by No. 6), and directing a rate to be levied for the payment of the interest thereon, but making distinct provisions for meeting the principal out of the profits of the stock to be taken, and from other funds. This By-law did not repeal No. 6, but the enactments in it showed clearly that the rates imposed by that By-law were meant to be dispensed with. *Held*, that the last mentioned By-law was bad, for it was a new and independent By-law, and not a mere supplement to No. 6, and should, therefore, have been published before the passing, and have contained the usual recitals and enactments required in By-laws for creating a loan. *Held* also, that By-law No. 6 was bad, though not moved against, for it was not published beforehand in the form in which it ultimately passed. (*In re Bryant and Pittsburg*, 13 U. C. Q. B. 347; but see *per* Spragge, C., in *Brock* v. *T. and N. R. Co.*, 17 Grant, 433.) Where the statute required publication in each newspaper published in the Municipality, an omission to publish it in one of the local newspapers was held to avoid the By-law. (*Simpson* v. *Lincoln*, 13 U. C. C. P. 48.) All that the section here annotated requires is publication "in some newspaper published, weekly or oftener, in the Municipality," in conjunction with the posting of the By-law at "four or more of the most public places in the Municipality." Where the statute simply required the By-law to be promulgated, it was held sufficient to publish it in the newspaper in which the By-laws of the City were usually published. (*City Council* v. *Truchelut*, 1 Nott & McC. (South Car.), 227.) It is not necessary that the By-law should be, before publication, signed and sealed, as required by sec. 226 of this Act. The word "By-law" is used in the statute not merely to designate an instrument containing all that is stated in sec. 226, but the same instrument which is still in the hands of the Council and under consideration. (*Paffard and Lincoln*, 24 U. C. Q. B. 16.) Where the statute provided for alternate modes of publication, and empowered the Corporation to determine which mode should be adopted, it was held that publication in the mode directed by the Clerk, without the intervention of the Corporation, was insufficient. (*Higly* v. *Bunce*, 10 Conn, 436, *Ib.* 567.) It is not, of course, for the Court, on application, summarily to set aside a By-law for defective publication. In such a case the Court will exercise its discretion, and set aside or refuse to set aside the By-law, according to circumstances. (*Boulton and Peterborough*, 16 U. C. Q. B. 380; *In re Gibson* v. *Bruce*, 20 U. C. Q. B. 398.)

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places in the Municipality; (*k*) 29-30 V. c. 51, s. 196, sub. 2; 37 V. c. 16, s. 6.

Notice. (3.) Appended to each copy so published and posted, shall be a notice signed by the Clerk of the Council, stating that such copy is a true copy of a proposed By-law which will be taken into consideration by the Council after one month from the first publication in the newspaper, stating the date of the first publication, and that at the hour, day and place or places therein fixed for taking the votes of the electors, the polls will be held; (*l*) *Vide* 29-30 V. c. 51, s. 196, sub. 3.

Poll. (4.) At such day and hour a poll shall be taken, and all proceedings thereat, and for the purpose thereof, shall be conducted in the same manner, as nearly as may be, as at a Municipal election; (*m*) 29-30 V. c. 51, s. 196, sub. 4.

Verified poll book to be returned. (5.) Every Returning Officer shall, on the day after the closing of the poll, return his poll book verified by solemn declaration under his hand, to the Clerk of the local Municipality in which the poll was taken, and in case of a By-law of a County Council, the Clerk of the local Municipality shall forthwith return to the Clerk of the County Council every poll book so delivered to him; (*n*) 29-30 V. c. 51, s. 196, sub. 5.

Clerk to sum up and declare result. (6.) The Clerk of the Council which proposed the By-law shall add up the number of votes for and against the same, and shall certify to the Council under his hand whether the

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(*k*) It is to be observed that publication in the newspapers is not alone made sufficient. Posting of the By-law at four or more of the most public places in the Municipality is also required.

(*l*) The notice may be in this form:

Take notice, that the above is a true copy of a proposed By-law, which will be taken into consideration by the Council of this Municipality after one month from the first publication in the (*naming the newspaper*), the date of which first publication was (*stating the day of the week, month and year*), and that the votes of the electors of the said Municipality will be taken thereon at (*naming the place or places*), on (*naming the day, &c.*), at (*naming the hour*).

D. C., *Clerk.*

(*m*) See sec. 104.

(*n*) This Act is defective in not making provision for the case of a poll book lost, stolen or destroyed before it reaches the Clerk of the Municipality. (See Con. Stat. Can. cap. 6, s. 68, as to Parliamentary Elections.) In the case of the trial of a controverted election, it has been held that secondary evidence might be received as to the contents of a lost poll book. (*Longford Case*, F. & F. 222; see also *Cardigan Case*, Bar. & Aust. 269; *Waterford Case*, 1 Pech. 240.)

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majority have approved or disapproved of the By-law, (*o*) and shall keep the same with the poll book among the records of his office. (*p*) 29-30 V. c. 51, s. 196, sub. 6.

Freeholders who may vote on by-laws.

**232.** Any person shall be entitled to vote on any By-law requiring the assent of the electors, who is a male ratepayer, and at the time of tender of the vote of the full age of twenty-one years, and a natural born or naturalized

(*o*) "The majority" here meant is apparently the majority of those who attended the meeting of the electors, and not an absolute majority of all the electors. But the dicta of learned judges on the point are not thoroughly consistent. In *Billings and Gloucester*, 10 U. C. Q. B. 273, the By-law was held bad on other grounds, and the point though raised left undecided. In *McAvoy* v. *Sarnia*, 12 U. C. Q. B. 102, Sir John Robinson said, "Where the Legislature have meant that a majority of those present at the meeting shall decide the question, they have said so in express words. Here they have not said so, but have required that there shall be the assent of 'a majority of the qualified municipal electors of the Municipality.'" He accordingly held, in the case before him, that an absolute majority of the whole body of the electors was required, and quashed the By-law, which was a probibitory liquor By-law. In doing so he used the following forcible language: "Judging from the words used in the clause before us, we cannot say that the Legislature meant to place it in the power of any meeting, however small, * * * to determine whether not merely all the other inhabitants of the Township, but all who might have occasion to sojourn in it or travel through it, should be able to buy a glass of beer." The reasoning of this case might be held, with much propriety, to apply to the imposition of enormous debts on Municipalities or portions of Municipalities in aid of railway enterprises. But in *Jenkins* v. *Elgin*, 21 U. C. C. P. 325, and *Erwin* v. *Townsend*, *Ib.* 330, the Court of Common Pleas were so clear to the contrary, that instead of granting a rule *nisi*, as in ordinary cases of doubt, they refused rules *nisi*. The language of Sir John Robinson, in *McAvoy* v. *Sarnia*, 12 U. C. Q. B. 102, was not, however, brought before the Court. Whether, if it had been, a contrary decision to that pronounced would have been given, is doubtful. Gwynne, J., in giving judgment in *Erwin* v. *Townsend*, 21 U. C. C. P. 332, said, "The whole spirit of our institutions, unless the contrary intention is clearly expressed, is, where a poll is given, that the majority of those who vote shall be taken to express the voice of the majority of the electors." Hagarty, C. J., in giving judgment in *Jenkins* v. *Elgin*, 21 U. C. C. P. 327, said, "The provision quoted, as to the Clerk certifying whether the majority have approved or disapproved, must certainly mean the majority on the poll books. He could hardly, in fact, ascertain the actual majority of all existing electors, except by personal inquiry outside the poll book," &c. Such also would appear to be the inference to be drawn from section 236 of this Act, which declares that "any By-law which shall be carried by a majority of the duly qualified electors *voting thereon*, shall, within six weeks thereafter, be passed by the Council which submitted the same. (See further, *People* v. *Morris*, 13 Wend. 325.)

(*p*) See sec. 186, and notes thereto.



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subject of Her Majesty, (*q*) and who has neither directly nor indirectly received, nor is in expectation of receiving, any reward or gift for the vote which he tenders; (*r*) and is at the time of such tender a freeholder, either at law or in equity, in his own right, or in right of his wife, of real property within such Municipality, of sufficient value to entitle him to vote at any Municipal election, and is rated on the last revised Assessment Roll as such freeholder, and is named or purported to be named, in the list of electors; (*s*) provided always, that in case of a new Municipality in which there has not been any Assessment Roll, the qualification of being named on such list and of being rated on the roll shall be dispensed with, but in such case such person offering to vote shall not be entitled to vote unless possessing the other qualifications above mentioned, and has at the time of tender of his vote sufficient property to have entitled him to vote if he had been rated for such property, and at such time shall name such property to the Returning Officer: and the Returning Officer shall note such property in his poll book, opposite the voter's name, at the request of any one entitled to vote on such By-law. (*t*) *Vide* 29-30 V. c. 51, ss. 77, 101, sub. 8; 31 V. c. 30, ss. 9, 46 & 47.

Proviso in case of new municipality where there has been no assessment roll.

Leaseholders who may vote on by-laws.

**233.** Any person shall be entitled to vote on any By-law requiring the assent of the electors, who is a male ratepayer, and at the time of tender of the vote of the full age of twenty-one years, and a natural born or naturalized subject of Her Majesty, and who has neither directly nor indirectly received, nor is in expectation of receiving, any reward or gift for the vote which he tenders, and is resident within the Municipality for which the vote is taken for one month next before the vote, and who is, or whose wife is, a leaseholder of real property within such Municipality of sufficient value to entitle him to vote at any Municipal election and is rated on the last revised Assessment Roll therefor, and which lease extends for the period of time

(*q*) See sec. 77 and notes thereto.

(*r*) See sec. 153 and notes thereto.

(*s*) See note *b* to sec. 77.

(*t*) This is a necessary provision. The general rule is to require both the possession of property and the rating of it on the roll; but the latter requirement presupposes the existence of a roll. In the case of a new Municipality during the first year there can be no roll. In such a case the possession of the property qualification is sufficient.

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within which the debt to be contracted or the money to be raised by such By-law is made payable; in which lease the lessee has covenanted to pay all Municipal taxes in respect of the property leased, and which person is named, or purported to be named, in the list of electors; (*u*) provided always, that in case of a new Municipality in which there has not been any Assessment Roll, the qualification of being named on such list and of being rated on the roll, and of residence for one month, shall be dispensed with, but in such case such person offering to vote shall not be entitled to vote unless possessing the other qualifications above mentioned, and unless he be at the time of tender of his vote a resident of the Municipality, and then has sufficient property to have entitled him to vote if he had been rated for such property, and at such time shall name such property to the Returning Officer; the Returning Officer shall note such property in his poll book, opposite the voter's name, at the request of any one entitled to vote on such By-law. (*v*) *Vide* 29-30 V. c. 51, ss. 77, 101, sub. 8; 31 V. c. 30, ss. 9, 46 & 47.

Proviso in case of new municipality where there has been no assessment roll.

**234.** Any ratepayer offering a vote in respect of a freehold on any such By-law, may be required by the Returning Officer, or any ratepayer entitled to vote on any such By-law, (*w*) to make the following oath or affirmation, or any part thereof, or to the effect thereof, before his vote is recorded: (*x*) That he is of the full age of twenty-one years, and is a natural born or naturalized subject of Her Majesty; that he is a freeholder in his own right (*or* in the right of his wife, *as the case may require*), within the Municipality for which the vote is taken; that he has not voted before on the By-law in the Township or Ward (*as the case may be*) in which he is tendering his vote; that he is, according to law, entitled to vote on the said By-law; that he has not directly

Oath of freeholder voting on by-law.

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(*u*) The voters under a By-law are not in all cases the same as ordinary electors. By-laws creating debts, not payable in the same Municipal year, usually provide for the payment of the debt in a term of years mentioned in the By-law. Leaseholders whose leases are for a less term than the term mentioned in the By-law, or in which the lessee is not bound to pay Municipal taxes, have no right to vote. (See *Erwin and Townsend*, 21 U. C. C. P. 330.)

(*v*) See note *t* to the preceding section.

(*w*) It is presumed that the Returning Officer or Chairman would have power to administer the oath. (See sec. 101.)

(*x*) See sec. 99 and notes thereto.

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or indirectly received any reward or gift, nor does he expect to receive any, for the vote which he tenders; that he is the person named, or purporting to be named, on the list of electors, *(or in case of a new Municipality, in which there has not been any Assessment Roll, then, instead of referring to being named in the list of electors, the person offering to vote may be required to name in the oath the property in respect of which he claims to vote)*, and no inquiries shall be made of any voter, except with respect to the facts specified in such oath or affirmation. *Vide* 29-30 V. c. 51, ss. 77, 101, sub. 8; 31 V. c. 30, ss. 9, 46 & 47.

Oath of leaseholder voting on by-law.

**235.** Any ratepayer offering to vote in respect of a leasehold on any such By-law, may be required by the Returning Officer, or any ratepayer entitled to vote on any such By-law, (*y*) to make the following oath or affirmation, or any part thereof, or to the effect thereof, before his vote is recorded:—(*z*) That he is of the full age of twenty-one years, and is a natural born or naturalized subject of Her Majesty; that he is a resident within the Municipality for which the vote is taken for one month next before the vote; that he *(or* his wife, *as the case may require)*, is a leaseholder within the municipality, and the lease extends for the period of time within which the debt to be contracted, or the money to be raised, by the By-law then submitted to the ratepayers, is made payable, and that the lessee has covenanted in such lease to pay all Municipal taxes; that he has not before voted on the By-law in the Township or Ward *(as the case may be)* in which he is voting; that he is, according to law, entitled to vote on the said By-law; that he has not directly or indirectly received any reward or gift, nor does he expect to receive any, for the vote which he tenders; that he is the person named, or purporting to be named, in the list of electors *(or in case of a new Municipality in which there has not been any Assessment Roll, then, instead of swearing to residence for one month next before the vote, and of referring to being named on the list of electors, the person offering to vote may be required to name in the oath the property in respect of which he claims to vote, and that he is a resident of such Municipality,)* and no inquiries shall be made of any voter, except with respect to the facts specified in such oath or affirmation. 29-30 V. c. 51, ss. 77, 101, sub. 8; 31 V. c. 30, ss. 9, 46 & 47.

(*y*) See note *w* to preceding section.

(*z*) See sec. 100, and notes thereto.

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**236.** Any By-law which shall be carried by a majority of the duly qualified electors voting thereon, (*a*) shall, (*b*) within six weeks thereafter, be passed by the Council which submitted the same. (*c*) 34 V. c. 30, s. 16.

By-law carried by voters to be passed by council.

DIVISION IV.—CONFIRMATION OF.

*By Publication. Sec. 237.*
*Notice. Sec. 238.*
*Consequent Validity. Sec. 239.*

**237.** Every promulgation of a By-law (*d*) shall consist in the publication, through the public press, of a true copy of the By-law, and of the signature attesting its authenticity, with a notice appended thereto of the time limited by law for applications to the Courts to quash the same or any part thereof; and the publication aforesaid shall be in a public newspaper published within the Municipality; or if there be no such newspaper, then in the public newspaper published nearest the Municipality, or in the County Town; (*e*) and the publication shall, for the purpose aforesaid, be continued in at least one number of such paper each week for three successive weeks. (*g*) *Vide* 29-30 V. c. 51, s. 200; 37 V. c. 16, s. 7.

Promulgation of by-laws.

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(*a*) See note *o* to sec. 231.

(*b*) This is obligatory. (Before 34 Vic. cap. 30, s. 16, it was in the discretion of the Municipal Council to pass or not to pass a By-law approved by the electors. The exercise of the legislative power of the Council was in all cases, before that statute, discretionary. In certain cases it could not be exercised without the direct approval of the electors; but in no case was it exercisable at the sole will of the electors.

(*c*) As to computation of time, see note *a* to sec. 128.

(*d*) Promulgation ordinarily means publication; but it is intended by this Act to give peculiar effect to a promulgated By-law. The notice appended to the By-law as published gives the time within which application must be made to the Court to quash the By-law. If the By-law promulgated be within the proper competence of the Council, it is to be deemed, notwithstanding any want of substance or form either in the By-law itself or in the time or manner of passing the same, a valid By-law. (Sec. 239.)

(*e*) See note *i* to sec. 231.

(*g*) A By-law requiring the assent of the electors must be published in *some* newspaper published *within* the Municipality; and if no such newspaper, in some public newspaper published nearest the Municipality, or in the County Town. (See sec. 281, sub. 2.)

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Notice to be given.

**238.** The notice to be appended to every copy of the By-law for the purpose aforesaid, shall be to the effect following: (*h*)

Form of such notice.

"NOTICE.—The above is a true copy of a By-law passed by the Municipal Council of the Township of A, in the County of B, one of the United Counties of B, C and D (*or as the case may be*), on the day of , 18 , and (*where the approval of the Lieutenant-Governor in Council is by law required to give effect to such By-law*) approved by His Excellency the Lieutenant-Governor in Council, on the day of , 18 ; and all persons are hereby required to take notice, that any one desirous of applying to have such By-law or any part thereof quashed, must make his application for that purpose to one of Her Majesty's Superior Courts of Common Law at Toronto, during the term of the said Superior Courts next after the special promulgation thereof by the publication of this notice in three consecutive numbers of the following newspapers, viz.: (*here name the newspapers in which the publication is to be made*) or he will be too late to be heard in that behalf; and take notice, that such term commences on the day of next. (*i*)

"*G. H.*, Township Clerk."

*Vide* 29-30 V. c. 51, ss. 202 & 203.

If not moved against within the time limited, to be valid.

**239.** In case no application to quash any By-law be made within the term next after the third publication of such By-law and notice as aforesaid, the By-law, or so much thereof as is not the subject of any such application, or not quashed upon such application, so far as the same

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Promulgation, under this section, is made to consist of publication "through the public press." This afterwards is defined as being publication in *a* (i. e. *any*) public newspaper published *within* the Municipality. If none such, then in *the* public newspaper published nearest the Municipality, or in the County Town.

(*h*) Where an Act of Parliament expressly provides that a thing is to be done in a given form, that form should be strictly followed. (*Warren* v. *Love*, 7 Dowl. P. C. 602; *Codrington* v. *Curlewis*, 9 Dowl. P. C. 968.) But where the direction is that the form given, or one "to the same effect" or to "the effect following," shall be followed, similar strictness is not required. (*Bacon* v. *Ashton*, 5 Dowl. P. C. 94; *Smith* v. *Wedderburne*, 4 D. & L. 296.)

(*i*) In the case of a By-law imposing a rate, the application to quash cannot be entertained after the next term of the Superior Courts of Common Law after promulgation. (See sec. 242.)

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ordains, prescribes or directs anything within the proper competence of the Council to ordain, prescribe or direct, shall, notwithstanding any want of substance or form, either in the By-law itself, or in the time or manner of passing the same, be a valid By-law. (*j*) 29-30 V. c. 51, s. 204; 35 V. c. 26, s. 4.

DIVISION V.—QUASHING BY-LAWS.

*How to Proceed. Sec. 240.*
*Time limited for Application. Sec. 241, 242.*
*Motion against, for Corrupt Practices. Sec. 243, 244.*
*No action till after Quashing and Notice. Sec. 245.*
*Liability of Municipality for Acts under Illegal By-laws. Sec. 246.*
*Tender of Amends. Sec. 247.*

**240.** In case a resident of a Municipality, or any other person interested (*a*) in a By-law, order or resolution of the Quashing by-laws.

(*j*) Neglect to make an application within the time prescribed has the effect of curing any *want* of substance or form, either in the By-law, &c., itself, or in the *time* or *manner* of passing the same, provided what is ordained or directed by the By-law, &c., be within the proper competence of the Council. If not of the proper competence of the Council, a By-law affords under no circumstances protection for what is done under it. (*Sutherland* v. *East Nissouri*, 10 U. C. Q. B. 626. See also sec. 450 and notes thereto.)

(*a*) The applicant, in strictness, should state that he is a resident of the Municipality in which the By-law was passed, or has an interest in the provisions of the By-law. (*Babcock* v. *Bedford*, 8 U. C. C. P. 527; *Bogart* v. *Belleville*, 6 U. C. C. P. 425.) Where an applicant, who moved against a By-law of the United Counties of Peterborough and Victoria, swore that during all the year 1850 he had been, and was at the time of the separation, a resident of and within the limits and boundaries of the Town of Peterborough, a Corporation within the County of Peterborough, it was held that the applicant was sufficiently described as a resident, so as to be entitled to make the application. (*In re Conger and Peterborough*, 8 U. C. Q. B. 349.) Where a freeholder of a Township, though not a resident, applied to quash a By-law, and it was objected that, being a non-resident, he could not do so; it was held that, as a freeholder of the Township, he had an *interest* in all the By-laws passed by the Township Council sufficient to enable him to move to quash any of its By-laws. (*In re De la Haye* v. *Toronto*, 2 U. C. C. P. 317.) So it has been held that the owner of real estate in the Municipality which had been assessed, though not himself named on the Assessment Roll, had a sufficient interest. (*In re Boulton and Peterborough*, 16 U. C. Q. B. 380.) Where the affidavit stated deponent to be a ratepayer and a resident householder, it was held unnecessary to give any further description of him. (*Baker* v. *Paris*, 10 U. C. Q. B.

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Council thereof, (*b*) applies to either of the Superior Courts of Common Law, (*c*) and produces to the Court a copy of the By-law, order or resolution, (*d*) certified under the hand of the Clerk and under the corporate seal, (*e*) and shows by

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621.) Acquiescence of the applicant cannot be properly used against him on an application to quash a By-law proved contrary to law, when other interests, both public and private, than those of the applicant are affected. (*Per* Wilson, J., *In re Fairbairn and Sandwich East*, 32 U. C. Q. B. 582.)

(*b*) The power delegated to the Courts summarily to quash illegal By-laws, &c., is one, so far as Municipal Institutions are concerned, peculiar to this country. It does not exist, so far as the editor is aware, either in Great Britain or the United States of America. (See note *k* to this section.) Before the statute 12 Vic. cap. 81, sec. 165, the Courts of Upper Canada had not any power summarily to quash *By-laws* of a Municipality (see *In re McGill and Peterborough*, 9 U. C. Q. B. 562), and that power was not extended to *orders* and *resolutions* till 22 Vic. cap. 99, s. 194. (See *In re Daniels and Burford*, 10 U. C. Q. B. 478; *In re Casar and Cartwright*, 12 U. C. Q. B. 341.) "Regulations" for a public market, adopted by the Council, may be moved against as orders and resolutions under the meaning of this section. (*In re Snell and Belleville*, 30 U. C. Q. B. 81. See further, note *k* to this section.)

(*c*) It has been held that the Practice Court is not authorized to entertain such an application. (*In re Sams and Toronto*, 9 U. C. Q. B. 181.)

(*d*) Applicant must produce to the Court a copy of *the* By-law, order or resolution, that is, of an *existing* By-law, &c. So that if before application the operation of the By-law be spent (*In re Terry and Haldimand*, 15 U. C. Q. B. 380), or expressly repealed (*In re McGill and Peterborough*, 9 U. C. Q. B. 562), the rule will be discharged. (*Ib.*) But where the repeal is after application to quash the By-law, and so a tacit acknowledgment of the illegality of the By-law, the Municipality will be ordered to pay the costs of the application. (*In re Coyne and Dunwich*, 9 U. C. Q. B. 309; *In re Coleman*, 9 U. C. C. P. 146; see further, *Patterson and Hope*, 31 U. C. Q. B. 360.)

(*e*) It is not necessary that the copy should be sealed with wax. An impression made in ink with a wooden block in the place of a seal would seem to be a sufficient seal (*The Queen* v. *St. Paul Covent Garden*, 7 Q. B. 232; see also *Hamilton* v. *Dennis*, 12 Grant, 325), especially if sworn on the implication that such is the seal of the Corporation. (*In re Kinghorn and Kingston*, 26 U. C. Q. B. 133; see also *In re Miles and Richmond*, 28 U. C. Q. B. 333; see further, *Ontario Salt Co.* v. *Merchants' Salt Co.*, 18 Grant, 551.) Where the seal of the Corporation, though not mentioned in the Clerk's certificate, was on the same page with the certificate, immediately above it and opposite to the signature of the Reeve and Clerk, the By-law was held to be sufficiently complied with. (*Baker* v. *Paris*, 10 U. C. Q. B. 621.) The Court will discharge a rule to quash a By-law, moved on a copy of the By-law, verified in a manner different from that

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affidavit, (*f*) that the same was received from the Clerk, (*g*)

prescribed by the statute, unless the reason for the variance is clearly and satisfactorily explained. (*Buchart* v. *Brant and Carrick*, 6 U. C. C. P. 130.) Where the By-law was one passed by the Corporation of two United Townships, and after dissolution of the union the applicant produced a copy of the By-law certified under the hand of the Clerk of the Senior Township and under the Corporate Seal of that Township, the statute was held to have been sufficiently complied with and the By-law quashed. (*In re Scott and Harvey*, 26 U. C. Q. B. 32.) Where the copy of the By-law put in, not being certified as the Act directs, could not be read, but the same was set out at length in affidavits filed, the deponent swearing that a By-law was passed by the Town Council in words following (setting out the By-law), the materials before the Court were held sufficient. *In re School Trustees of Sandwich and Sandwich*, 23 U. C. Q. B. 639.) It will be observed that the statute is silent as to the right of the Clerk to charge fees for the certified copy or seal, while the statute 12 Vic. cap. 81, s. 155, made it the duty of the Clerk only to give the copy "upon payment of his fees therefor." (See *In re Township Clerk of Euphrasia*, 12 U. C. Q. B. 622.)

(*f*) The affidavit ought to be entitled of the Court to which the motion is made (*Fraser* v. *Stormont, Dundas and Glengarry*, 10 U. C. Q. B. 286); but if it appear from the jurat to have been sworn before a Commissioner of that Court, the objection will not avail. (*Ib.*) If, however, the Commissioner merely describe himself as "a Commissioner," &c., without stating of what Court, the affidavit must be intituled. (*In re Hirons et al and Amherstburgh*, 11 U. C. Q. B. 458.) It need not be intituled "The Queen *v.* The Municipal Council of," &c., but may be "In the matter of W. S. C. and the Municipal Council of," &c. (*In re Conger and Peterborough*, 8 U. C. Q. B. 349.) Affidavits in answer must, it is apprehended, be entitled in the same way as the rule is which they are produced to oppose. (See Tapping on Mandamus, 413.) "In the matter of A. B., appellant, and C. D., respondent," held unobjectionable. (*In re McLean and St. Catharines*, 27 U. C. Q. B. 603.)

(*g*) The procedure pointed out by this section is plain and simple. And yet it is often disregarded, and something more difficult adopted in substitution. This seems strange. (See *per* Richards, C. J., in *Mottashed and Prince Edward*, 30 U. C. Q. B. 77.) Where deponent swore that the copy produced was received by one T. from the Clerk of the Council, and by T. was delivered to the deponent, the affidavit was held sufficient. *In re Fisher and Vaughan*, 10 U. C. Q. B. 492.) But where the applicant swore that he received the copy of the By-law from the Clerk of the Council through R. J. F., his attorney, the sufficiency of the affidavit was doubted. (*In re Mottashed and Prince Edward*, 30 U. C. Q. B. 77.) The statute does not require that the affidavit should refer to the copy of the By-law as annexed, or that it should in fact be annexed, but only that it be shown that the copy produced is the copy received from the Clerk. (*Bessey and Grantham*, 11 U. C. Q. B. 156.) But the Court will not, without sufficient cause shown on affidavit, dispense with the production of the copy of By-law, certified as the section requires. (*In re Buchart and Brant*, 6 U. C. C. P. 134.)

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and that the applicant is resident or interested as aforesaid, (*h*) the Court, after at least four days' service (*i*) on the Corporation of a rule to show cause in this behalf, (*j*) may quash the By-law, order or resolution, (*k*) in whole or in part,

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(*h*) See note *a* to this section.

(*i*) The meaning is that the Corporation shall have four full days *at least* to answer the rule. (See note *g* to sec. 105.) The time under the old Act was at least *eight* days. Where, under the old Act, the rule *nisi* was obtained near the end of the term, and made returnable eight days after service, and defendants appeared during the following term and objected that the rule should have been to show cause on a day certain, held that the objection, even if good, was waived by appearance. (*Perry* v. *Whitby*, 13 U. C. Q. B. 564.)

(*j*) The service is to be "on the Corporation," and, therefore, where the motion was to quash a By-law for taking stock in a railway company, on the return of the rule, and though the Corporation did not show cause, the Court declined to hear counsel for the railway company. (*In re Billings and Gloucester*, 10 U. C. Q. B. 273.) In a subsequent case, where the Corporation declined to show cause, the Court refused to hear counsel for some of the ratepayers of the Corporation. (*In re Webb and Yarmouth*, Q. B. H. T. 1866. See further, *In re McKinnon and Caledonia*, 33 U. C. Q. B. 502.)

(*k*) A superintending power of a judicial character is necessary to be exercised in order to keep Municipal bodies, as well as corporate bodies of all other kinds, within legal and reasonable limits in the exercise of their powers. There has always been such a power where the English law has prevailed; without it great oppression might be exercised and great confusion created. It is a description of control from which any Court to whom it is committed would rather be relieved. In the nature of things the Supreme Legislature could not exercise such a control so as to meet the exigency of each case; it is, however, in their power to vest the authority where they think best. As the law stands, it can only be summarily exercised in the Superior Common Law Courts. These, while they retain it, must exercise it in each case under the same sense of responsibility as they discharge their other duties. (*Per* Robinson, C. J., in *In re Barclay and Darlington*, 12 U. C. Q. B. 92.) The power, so far as the quashing of By-laws, orders and resolutions is concerned, depends wholly on this statute (*Sutherland* v. *East Nissouri*, 10 U. C. Q. B. 626); and that power will in general be exercised only when there is some illegality apparent on the face of the By-law, &c. (*In re Hill and Walsingham*, 9 U. C. Q. B. 310; *Grierson* v. *Ontario*, 9 U. C. Q. B. 623; *In re Standley and Vespra and Sunnidale*, 17 U. C. Q. B. 69; *In re Scarlett and York*, 14 U. C. C. P. 161; *In re Secord and Lincoln*, 24 U. C. Q. B. 142); or where the By-law, order or resolution is shown to have been passed under circumstances which, by the express terms of the statute, make it illegal. (*In re Lafferty and Wentworth and Halton*, 8 U. C. Q. B. 232; *In re Sutherland and East Nissouri*, 10 U. C. Q. B. 626.) The exercise of the power is in every case discretionary; for it is not said the Court *shall* quash, but that i

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for illegality, and, according to the result of the applica-

*may* quash, &c. (*In re Hodgson and York, Peel and Ontario*, 13 U. C. Q. B. 268); in other words, the statute confers an authority with a discretion to abstain from its exercise. (*Per* Draper, C. J., in *In re Michie and Toronto*, 11 U. C. C. P. 386; see also *Bogart and Belleville*, 6 U. C. C. P. 428); and where the By-law is legal on its face, and a great length of time has been allowed to elapse unexplained, between the passing of the By-law and the motion, the Court will abstain from the exercise of its discretionary power (*In re Hill and Tecumseth*, 6 U. C. C. P. 297; *In re Cotter and Darlington*, 11 U. C. C. P. 265; *In re Grant and Toronto*, 12 U. C. C. P. 357; *In re Leddingham and Bentinck*, 29 U. C. Q. B. 206); especially if it be shown that work has been done under the By-law, money expended thereunder, or that the By-law has been otherwise so acted upon that its repeal would cause much inconvenience (*In re Hodgson and York, Peel and Ontario*, 13 U. C. Q. B. 268; *In re Ianson and Reach*, 19 U. C. Q. B. 591; *In re Michie and Toronto*, 11 U. C. C. P. 379; *In re Scarlett and York*, 14 U. C. C. P. 161; *In re Drope and Hamilton*, 25 U. C. Q. B. 363; *In re Platt and Toronto*, 33 U. C. Q. B. 53; *In re McKinnon and Caledonia*, 33 U. C. Q. B. 502); and where a party complaining of a By-law permits a term of the Courts of Common Law to elapse without moving to quash it, the Court of Chancery will refuse to interfere by injunction to restrain the Municipality from proceeding to enforce the provisions of the By-law. (*Carroll* v. *Perth*, 10 Grant, 64; *Grier* v. *St. Vincent*, 12 Grant, 330; s. c. 13 Grant, 512, 518.) But of course a By-law substantially illegal cannot (subject to the provisions of sec. 239 of this Act) afford any protection for what has been done under it, and so incidentally its validity may, in an action, be decided upon at Common Law by Common Law Courts. (*Sutherland* v. *East Nissouri*, 10 U. C. Q. B. 626.) So on an application to quash a conviction for something done contrary to a By-law, the legality of the By-law, though not quashed, may be questioned. (*The Queen* v. *Osler*, 32 U. C. Q. B. 324.) If the By-law be not void without being quashed, all proceedings duly had under it while in force may be justified under it. (*Barclay* v. *Darlington*, 5 U. C. C. P. 432.) No action can be brought for anything done under it till the By-law is quashed. (See sec. 246.) It is no ground of illegality for quashing a By-law that it is not sealed with the seal of the Municipality, for unless so sealed it is not a legal By-law, and there is no jurisdiction to quash it as such. (*In re Croft and Brooke*, 17 U. C. Q. B. 269.) But in some cases that which was intended to be a By-law, and not in fact a By-law for the want of the corporate seal, may be looked upon as a "resolution or order," and so now subject to the summary jurisdiction of the Courts on application to quash. The Court has refused to quash a By-law on the ground that a quorum of the Council was not present at its passing. *Sutherland* v. *East Nissouri*, 10 U. C. Q. B. 626.) Where mere errors of calculation are charged, unless clearly made out, the Court will not quash the By-law. (*Paffard and Lincoln*, 24 U. C. Q. B. 16;) and even if shown to exist and to be extensive, the Court will lean strongly to the support of the By-law where it appears to have been acted upon. (*Grierson and Ontario*, 9 U. C. Q. B. 623; *Secord and Lincoln*, 24 U. C. Q. B. 142.) Formerly an appeal to the Court

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tion, award costs for or against the Corporation. (*l*) 29-30 V. c. 51, s. 198.

Time within which application must be made.

**241.** No application to quash any such By-law, order or resolution, in whole or in part, shall be entertained by any Court unless such application shall be made to such Court within one year from the passing of such By-law, order or

Exception.

resolution, (*m*) except in the case of a By-law requiring the

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of Appeal only lay where the By-law was quashed and wholly quashed. (Con. Stat. U. C. cap. 13, sec. 28.) But it is now enacted that an appeal shall lie in all cases in which a rule *nisi* to quash a By-law, in *whole or in part*, has *either* been discharged or made absolute. (34 Vic. cap. 11, sec. 2.)

(*l*) The Court awards costs "*for* or *against* the Corporation" according "to the *result* of the application." (See *Brown and York*, 9 U. C. Q. B. 453.) But the rule is not imperative. Where it was shown that the applicant himself was a petitioner for the particular resolution moved against, costs were refused him though the resolution was quashed. (*In re Morell and Toronto*, 22 U. C. C. P. 323.) Where a Municipal Corporation, on being served with a rule *nisi*, repealed the By-law complained of, the Court, notwithstanding, obliged them to pay the costs of the application. (*In re Coyne and Dunwich*, 9 U. C. Q. B. 309.) Where Municipal Councils act with an anxious desire to comply with the provisions of the Act, and with a view to the promotion of the public benefit, applications made in the interest of private individuals to quash a By-law, if unsuccessful, should be visited with costs to be paid to the Municipality. (*Per* Gwynne, J., *In re Montgomery and Raleigh*, 21 U. C. C. P. 397, 398.) Where, however, it appears that the Corporation by its defective By-law induced the application, costs will be refused to them. *Re Platt* v. *Toronto*, 33 U. C. Q. B. 53.) If the Corporation do not, when called upon, show cause to the rule, though the rule be discharged, no costs will be given to them. (*Kelly and Toronto*, 23 U. C. Q. B. 425.) Where the applicant only partially succeeds, it is not usual to give him costs. (*Patterson and Grey*, 18 U. C. Q. B. 189; *Ex rel. McMullen and Caradoc*, 22 U. C. C. P. 356.) The Court may apportion the costs between the parties according to the result. (*Snell and Belleville*, 30 U. C. Q. B. 94.)

(*m*) This is a limitation of the power conferred on the Superior Courts of Common Law by the preceding section. The application under this section must be made "*within* one year after the passing of the By-law," &c. If not so made, *it shall not be entertained*. (See *Smith* v. *Rooney*, 12 U. C. Q. B. 661, as to the meaning of similar words.) It is in the discretion of the Court to require great promptness of application, and to refuse to quash a By-law even though the application be made within the year. (See remarks of Richards, C. J., in *Taylor and West Williams*, 30 U. C. Q. B. 348.) It was at all times in the discretion of the Court to refuse to accede to an application to quash a By-law when great inconvenience would arise from the quashing. (*In re Grant and Toronto*, 12 U. C. C. P. 357.) In the case of a By-law imposing a rate and specially promulgated, the application is not to be entertained after the term next after the

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assent of electors or ratepayers, when such By-law has not been submitted to, or has not received the assent of such electors or ratepayers, and in such case an application to quash such By-law may be made at any time. (*n*) 29-30 V. c. 51, s. 198.

Time after which by-law cannot be quashed, if promulgated.

**242.** In case a By-law by which a rate is imposed has been promulgated in the manner herein specified, (*o*) no application to quash the By-law shall be entertained (*p*) after the next Term of the Superior Courts of Common Law after the promulgation. (*q*) 29-30 V. c. 51, s. 199.

Quashing by-laws obtained by bribery, &c.

**243.** Any By-law, the passage of which has been procured through or by means of any violation of the provisions of sections one hundred and fifty-three and one hundred and fifty-four of this Act, (*r*) shall be liable to be quashed upon any application to be made in conformity with the provisions hereinbefore contained. (*s*) 35 V. c. 36, s. 13.

Procedure in such case.

**244.** Before determining any application for the quashing of a By-law, upon the ground that any of the provisions of

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third publication of the By-law. (See sec. 239.) Certain By-laws may be quashed in vacation. (See sec. 244.)

(*n*) If a By-law require the assent of the electors or ratepayers to render it valid, and no such assent be obtained, the By-law will be held void (see note *g* to sec, 231); and in such a case the application to quash the By-law "may be made at any time."

(*o*) See sec. 237 and 238.

(*p*) See note *m* to sec. 241.

(*q*) The inconvenience of quashing a By-law imposing a rate, after it has been acted upon for months, is generally more than equal to the inconvenience of allowing a By-law, though technically defective, to exist. The effect of this section will be important, in curing technical defects in By-laws imposing rates. The limitation applies to By-laws which have been specially promulgated, and commences at the time of such promulgation (*per* Draper, C. J., in *Bogart* v. *Belleville*, 6 U. C. C. P. 425); and where the By-law imposes a rate, it would be well for the applicant moving against it more than a Term after its passing, to show that it has not been specially promulgated. (*In re Grant and Toronto*, 12 U. C. C. P. 357; but see also remarks of Draper, C. J., in *Bogart* v. *Belleville*, 6 U. C. C. P. 425.) If the By-law moved against be one requiring the assent of electors or ratepayers, and it be shown that such By-law was not submitted to the electors or ratepayers, the application to quash it may be made at any time. (See note *n* to sec. 241.)

(*r*) That is, by means of "corrupt practices."

(*s*) The procedure following is new. It will be observed that the party applying is not delayed till term for the purpose of making his application.

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the said one hundred and fifty-third and one hundred and fifty-fourth sections of this Act have been contravened in procuring the passing of the same, and if it is made to appear to a Judge of one of the Superior Courts of Law, that probable grounds exist for a motion to quash such By-law the Judge may make an order for an inquiry, to be held upon such notice to the parties affected, as the Judge may direct concerning the said grounds, before the Judge of the County Court of the County in which the Municipality which passed the By-law is situate, and require that upon such inquiry, all witnesses, both against and in support of such By-law, be orally examined and cross-examined upon oath before said County Court Judge; and the said County Court Judge shall thereupon return the evidence so taken before him to the Clerk of the Crown and Pleas at Toronto; (*t*) and after the return of said evidence, and upon reading the same, any Judge of the said Superior Courts may, upon notice to such of the parties concerned as he shall think proper, proceed to hear and determine the question; (*u*) and if the grounds therefor shall appear to him to be satisfactorily established, it shall be competent to him to make an order for quashing said By-law, (*v*) and may order the costs attending said proceedings to be paid by the parties or any of them who shall have supported said By-law; and if it shall appear that the application to quash said By-law ought to be dismissed, the said Judge may so order, and in his discretion award costs, to be paid by the persons applying to quash said By-law. (*w*) 35 V. c. 36, s. 14.

Costs.

(*t*) This section provides for an "inquiry," and afterwards for "hearing and determination." The inquiry is to be held before the Judge of the County Court, and the hearing and determination before any Judge of one of the Superior Courts of Law; but before an inquiry can be ordered, "probable grounds" for a motion to quash the By-law must be shown to the Superior Court Judge to whom the application is made. On such inquiry all witnesses, both against and in support of the By-law, shall be orally examined and cross-examined before the County Judge; but apparently no express provision is made for compelling the attendance of witnesses on the inquiry; in all probability their attendance may be compelled by subpœna issued out of the Court in which the application is pending.

(*u*) As to what is a hearing and determination, see *The King* v. *Justices of Kent*, 9 B. & C. 283, and *In re Judge of Perth and Robinson*, 12 U. C. C. P. 252.

(*v*) This is the only case in which a By-law of a Municipality can be quashed in vacation. (See sec. 240 and notes thereto.)

(*w*) See note *l* to sec. 240.

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Stay of proceedings on the by-law.

**245.** After an order has been made by a Judge directing an inquiry, and after a copy of such order has been left with the Clerk of the Corporation of which the By-law is in question, all further proceedings upon the By-law shall be stayed until after the disposal of the application in respect of which the inquiry has been directed, (*a*) but if the matter be not prosecuted to the satisfaction of the Judge, he may remove the stay of proceedings. 35 V. c. 26, s. 15.

Municipality to be liable for acts done under illegal by-law.

**246.** In case a By-law, order or resolution be illegal in whole or part, (*b*) and in case anything has been done under it, (*c*) which, by reason of such illegality, gives any person

(*a*) A stay of proceedings on an application to quash a By-law is a novelty. No provision is made for it on an ordinary application to quash a By-law. It is not stated in what manner the stay of proceedings under this section is to be enforced. The ordinary mode of enforcing a rule of the Queen's Bench or Common Pleas, is by attachment, in the nature of contempt. But the power to award process of contempt for the disobedience of a judge's order, in the absence of express legislative authority, is doubtful. (See *In re Allen*, 31 U. C. Q. B. 458.)

(*b*) It is not necessary that the illegality should appear on the face of the By-law in order to bring into operation the provisions of this section. If, for example, in the case of a road, it be run through an orchard contrary to the statute, there can be no question about the By-law being illegal. In such a case the party must apply and have the By-law quashed, before he can sue for anything done under the By-law. There may be cases where parties might maintain actions without taking that course; but it is apprehended the effect of the section is to deprive parties of any action whatever against any one, so long as the By-law has neither been quashed nor repealed, whenever it is made to appear that what is complained of was done under a By-law. (*Black* v. *White et al.*, 18 U. C. Q. B. 371; *Smith* v. *Toronto*, 7 U. C. L. J. 239.) Whenever the By-law be quashed or repealed, the action must be brought against the Corporation alone, and not against the person acting under it. (*Black* v. *White et al.*, 18 U. C. Q. B. 371.) The quashing or repeal of the By-law is not to be regarded as taking the defence from parties acting under the By-law while in force; for all proceedings had under it while in force, if legalized by it, may, notwithstanding its repeal or being quashed, be justified under it. (*Per* Macaulay, C. J., in *Barclay* v. *Darlington*, 5 U. C. C. P. 438.)

(*c*) Are these words to be held to mean only anything done in the execution of the By-law, or for the purpose of carrying it out; or are they not to be construed to mean also anything done in reliance on the legality of the By-law, as, entering upon land which, if the By-law be valid, is a public highway, but which, if the By-law be not valid, leaves the parties exposed to be treated as trespassers? Unless the latter construction be adopted, the Act will in this respect fail in many cases of the effect which must have been intended. (*Per* Robinson, C. J., in *Black* v. *White et al.*, 18 U. C. Q. B. 369.)

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Notice of action.

a right of action, (*d*) no such action shall be brought until one month has elapsed after the By-law, order or resolution has been quashed or repealed, nor until one month's notice in writing, of the intention to bring such action, has been given to the Corporation, (*e*) and every such action shall be brought against the Corporation alone, and not against any person acting under the By-law, order or resolution. (*f*) 29-30 V. c. 51, s. 205.

Tender of amends.

**247.** In case the Corporation tenders amends to the plaintiff or his attorney, (*g*) if such tender be pleaded and

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(*d*) The right of action intended is a right of action for the recovery of damages, in which it may be important to tender amends. It does not therefore apply to actions of replevin, when brought merely to try the right to the property replevied. (*Wilson* v. *Middlesex*, 18 U.C. Q. B. 348; *Haynes* v. *Copeland et al*, 18 U.C. C. P. 150.)

(*e*) The section declares that no action shall be brought until the By-law, &c., has been quashed or repealed for one calendar month, and this, as already mentioned, precludes the bringing of the action while the By-law, &c., subsists (see *Carmichael* v. *Slater*, 9 U. C. C. P. 423); but it does not follow that the Statutes of Limitations only begin to run from the time of quashing or repealing. It is clear that actions may be brought (though only against the Corporation) for things done under the illegal By-law, &c., that is things done in pursuance of, or in execution of it, or under its authority while in force. The right of action may be held to vest the moment the thing is done, and, if so, every statute limiting a right of action of the particular kind would begin to run forthwith. Were it not so, very stale matters might be made grounds of action against Municipal Councils, and which (in the case of individuals) would be outlawed.

(*f*) It appears, therefore, that if anything has been done under a By-law, &c., which, being illegal, gives any person a right of action—

1. The action shall be brought against the Corporation that passed the By-law, &c., and not against any person who acted under it.

2. The action is not to be brought while the By-law, &c., is in force, nor until one calendar month has elapsed after the By-law, &c., is quashed or repealed.

3. Before bringing it, one calendar month's notice in writing of the intention to bring it must first be given to the Corporation.

4. Whether notice of action can be given *before* the By-law, &c., is quashed or repealed is a question, but material only in case the time for bringing the action is limited, and the time about to expire. (See *McKenzie* v. *Kingston*, 13 U. C. Q. B. 634.)

(*g*) The law as to tender is not much understood by the general public.

1. *Definition.*—A tender in this section means the offering of money in satisfaction of a cause of action arising out of something done under a By-law, order or resolution, quashed or repealed.

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(if traversed) proved, (*h*) and if no more than the amount tendered is recovered, the plaintiff shall have no costs, but costs shall be taxed to the defendant, and set off against the verdict, and the balance due to either party shall be recovered as in ordinary cases. (*i*) 29-30 V. c. 51, s. 206.

DIVISION VI.—BY-LAWS CREATING DEBTS.

*Requisite formalities.* *Sec. 248-250.*
*Assent of Electors, when required.* *Sec. 251.*
*When Special Council Meeting sufficient.* *Sec. 251, 252.*
*When repealable and when not.* *Sec. 253, 254.*
*Illegal repeal to be ignored.* *Sec. 255.*
*Purchase of Public Works.* *Sec. 256.*
*Rates to be imposed therefor.* *Sec. 257.*

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2. *How made.*—A tender must be unqualified and unconditional. (*Mitchell* v. *King*, 6 C. & P. 237; *Jennings* v. *Major*, 8 C. & P. 61; *Strong* v. *Harvey*, 3 Bing. 304.) Whether conditional or not, is a question for the jury. (*Marsden* v. *Goode*, 2 C. & K. 133; *Milburn* v. *Milburn*, 4 U. C. Q. B. 179.) Strictly speaking, the tender ought to be of specie; but a tender in bank notes, if not objected to on the ground of being notes, will be good. (*Blow* v. *Russell*, 1 C. & P. 365.) The precise sum intended, or more, must be tendered, without requiring change. (*Brady* v. *Jones*, 2 D. & R. 305.) The money ought to be actually produced (*Kraus* v. *Arnold*, 7 Moo. 59; *Leatherdale* v. *Sweepstone*, 3 C. & P. 342; *Thompson* v. *Hamilton*, 5 U. C. O. S. 111); but this may be dispensed with by the party to whom the tender is made, as, where defendant said he had the money in his pocket, and plaintiff said, "You need not give yourself the trouble of offering it, for I will not take it." (*Douglass* v. *Patrick*, 3 T. R. 684; *Jackson* v. *Jacob*, 3 Bing. N. C. 869.) A receipt for the money cannot be insisted upon. (*Cole* v. *Blake*, 1 Peake, 238.)

3. *To whom made.*—Under this section the amends may be tendered "to the plaintiff or his attorney." A tender, strictly speaking, ought to be made before the writ is sued out, and if made to the plaintiff himself would be more satisfactory than if made to his attorney. But if the attorney is authorized to settle the business, and writes to defendants previous to suing out the writ warning them of the action unless they pay him the money or the like, the tender may clearly be made to the attorney. (Sellon, Pr. I. 315.) The attorney must, under any circumstances, be one employed in the particular action, and not merely one generally employed by plaintiff. (*Ib.*)

(*h*) It is not enacted that the tender may be given in evidence under the general issue, and it is apprehended that it ought to be specially pleaded.

(*i*) The object of the tender is to prevent useless litigation. The tender admits a cause of action, but limits the amount of damages arising therefrom. The party tendering in effect says, "I admit you have a right to bring this action, but I do not admit that you



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By-laws for contracting debts.

**248.** Every such Council may, under the formalities required by law, pass By-laws for contracting debts by borrowing money or otherwise, and for levying rates for payment of such debts on the ratable property of the Municipality, for any purpose within the jurisdiction of the Council, (*k*) but no such By-law shall be valid which is not in accordance with the following restrictions and provisions, (*l*) except in so far as may be otherwise provided in the next two sections of this Act:

Terms of. When to take effect.

(1.) The By-law, if not for creating a debt for the purchase of public works, (*m*) shall name a day in the financial year

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are entitled to any damages beyond the amount tendered." If plaintiff declines the tender, and recovers no more than the amount tendered, he loses his costs, and, worse still, is compelled to pay the costs of defendant, which may be set off against his verdict.

(*k*) The power here conferred is under the formalities required by law:

1. To pass By-laws for contracting debts by borrowing money or otherwise.

2. And for levying rates for the payment of such debts on the ratable property of the Municipality, for any purpose within the jurisdiction of the Council.

In ordinary trading, Corporations have clearly an implied power to borrow money for the purposes of their business, and to give securities for the repayment of the same (*Curtis* v. *Leavitt*, 15 N. Y. 9; *Barry* v. *Merchants' Exchange*, 1 Sandf. Ch. 280; *Beers* v. *Phœnix Glass Co.*, 14 Barb. 358; *Fay* v. *Noble*, 12 Cush. 1; *Lucas* v. *Pitney*, 3 Dutch. (N. J.) 221; *Stratton* v. *Allen*, 16 N. J. Eq. 229); but whether such a power is to be implied in the case of a Municipal Corporation is not so clear. (See *Bank* v. *Chillicothe*, 7 Ohio, Part II. 31; *State* v. *Maddison*, 7 Wis. 582; *Mills* v. *Gleason*, 11 Wis. 470; *City* v. *Lamson*, 9 Wall. 477; *Ketchum* v. *Buffalo*, 14 N. Y. 356; *Canal Bank* v. *Supervisors*, 5 Denio, 517; *Barker* v. *Loomis*, 6 Hill 463; *People* v. *Brennan*, 39 Barb. 522.) The power, however, is here in express terms conferred subject to certain limitations. Express power to borrow implies the power to give security to the lender. (*Railroad Co.* v. *Evansville*, 15 Ind. 395; *Commonwealth* v. *Pittsburg*, 34 Pa. St. 496; *Middleton* v. *Alleghany Co.*, 37 Pa. St. 237; *Seybert* v. *Pittsburg*, 1 Wall. 272; *De Voss* v. *Richmond*, 18 Grat. (Va.) 338; *Rogers* v. *Burlington*, 3 Wall. 654; *Galena* v. *Corwith*, 48 Ill. 423).

(*l*) The power to raise money by Municipal taxation is liable to abuse. For the security of the creditor, as well as for the protection of the ratepayers, restrictions are necessary. It is here expressly declared that no such By-law as authorized shall be valid if not in accordance with the restrictions and provisions following. The statute is not simply, as formerly, directory. (See *In re Sells and St. Thomas*, 3 U. C. C. P. 286, 291; see further, *Baltimore* v. *Gill*, 31 Md. 375; *Weston* v. *Syracuse*, 17 N. Y. 110; *Ketchum* v. *Buffalo*, 14 N. Y. 356; *Smith* v. *Morse*, 2 Cal. 524; *Galena* v. *Corwith*, 48 Ill. 423.)

(*m*) As to which see sec. 256.

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in which the same is passed, when the By-law shall take effect; (*n*)

When debt to be redeemed.

(2.) If not contracted for gas or water works, or for the purchase of public works, according to the statutes relating thereto, the whole of the debt and the obligations to be issued therefor shall be made payable in twenty years at furthest from the day on which such By-law takes effect; and if the debt is contracted for gas or water works, the same shall in like manner be paid in thirty years at furthest from the day on which the By-law takes effect; (*o*)

If for gas or water works etc.

To provide a yearly rate.

(3.) The By-law shall settle an equal special rate per annum, in addition to all other rates, to be levied in each year for paying the debt and interest; (*p*)

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(*n*) It seems that the Legislature intend that in the body of every By-law shall be stated a day on which the same is to take effect. The date on which a By-law is to take effect does not necessarily form a part thereof, though it may be the practice of some officer of the Corporation to mark the day of its passing on it. "The Legislature, however, meant that it should not be necessary to refer to anything extrinsic to the By-law for the purpose of learning when it would or had come into operation. The purchaser of a debenture, for instance, would require to see that it and the By-law under which it was issued were legal, and might, on that account, require to see when the By-law took effect." (*Per* Draper, C. J., *In re Michie and Toronto*, 11 U. C. C. P. 384.) The day named in the By-law for it to take effect must be in the same financial year in which the By-law is passed. It is not intended that the Municipal Council shall have power to postpone the operation of such a By-law to the next or any subsequent year.

(*o*) The power to contract a debt payable at a future period, and to secure its payment at that period by the ratepayers then living, is founded on the principle that the object for which the debt is contracted is one which will benefit future ratepayers as well as those living at the time the debt is contracted. This is quite consistent with the policy of Municipal law, as explained in note *h* to sec. 258. But, unless provided to the contrary, as in the case of public works, &c., the debentures must be payable in twenty years at furthest from the day on which the By-law takes effect, and the By-law must be made to take effect in the same financial year in which it was passed. (See preceding note.) If the debt be contracted for gas or water-works thirty years are allowed.

(*p*) The By-law is to "settle" the rate and not leave it to a Municipal officer to be computed (see *The Canada Co.* v. *Middlesex*, 10 U. C. Q. B. 93); and when so settled it is to be a special rate (*Mellish* v. *Brantford*, 2 U. C. C. P. 35) and not only so, but "an *equal* special *rate per annum*," that is, the rate is to be equal in each succeeding year. The rate under this subsection must be equal and uniform. (See *In re Grierson and Ontario*, 9 U. C. Q. B. 623.) "The statute says a special rate per annum to be levied in each year—not special rates to be yearly imposed, but a rate indicative

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Amount thereof.

(4.) Such special rate shall be sufficient, according to the amount of ratable property appearing by the last revised Assessment Rolls, to discharge the debt and interest when respectively payable; (*q*)

To be irrespective of future increase of ratable property, &c.

(5.) The amount of ratable property shall be ascertained irrespective of any future increase of the ratable property of the Municipality, and of any income in the nature of tolls, interest or dividends, from the work, or from any stock, share or interest in the work, upon which the money to be so raised or any part thereof is intended to be invested, and also irrespective of any income from the temporary investment of the sinking fund or of any part thereof; (*r*)

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of uniformity." (*Per* Macaulay, C. J., *In re Sells and St. Thomas*, 3 U. C. C. P. 291.) "The rate is throughout spoken of as a rate, not rates, implying uniformity, although for two objects, namely—the payment of the interest becoming due annually, and a sinking fund to defray the principal when the same shall become due." (*Ib.* p. 292.) "Otherwise an arbitrary distribution of the burthen might be made, and numerous debts be deferred and loaded upon Municipalities at distant periods." (*Ib.* 291.) "I think that the whole spirit of the statutes shows that whatever the rate is, it must be equal in each successive year, and not fluctuating according to the arbitrary discretion of the Municipality creating the debt, or raising the loan and passing the By-law for the liquidation thereof." (*Ib.* 292.) Therefore a By-law providing for payment of the debt created, as per the following schedule—

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 1852 . . . | £0 | 1 | 0½ | in the pound | | £311 | 3 | 11½ |
| 1853 . . . . | 0 | 0 | 4½ | " | " | 111 | 18 | 4½ |
| 1854 . . . . | 0 | 0 | 4¾ | " | " | 118 | 1 | 2 |
| 1855 . . . . | 0 | 0 | 4⅝ | " | " | 119 | 1 | 7½ |
| 1856 . . . | 0 | 0 | 6¼ | " | " | 155 | 11 | 11¾ |
| | | | | | | £815 | 17 | 1¼ |

—was held bad. (*In re Sells and St. Thomas*, 3 U. C. C. P. 288.) But it is now by statute provided that the Municipal Council may, in its discretion, make the principal of the debt repayable by annual instalments (sec. 250), in which case, however, the instalments are "to be of such amounts that the aggregate amount payable for principal and interest in any year shall be *equal*, as nearly as may be, to what is payable for principal and interest during each of the other years" of the period within which the debt is to be paid. (Sec. 250.) So in case of By-laws to raise money in aid of a railway company. (See sec. 474.)

(*q*) It does not appear to be necessary that the By-law should set forth the *estimates* on which it is founded. (See note *h* to sec. 13 of the Assessment Act.) The Court will intend that proper estimates have been made, in the absence of evidence that they are wanting. (*Ib.*) If the rate is demonstrated to be insufficient the By-law may be quashed. (See note *i* to sec. 14 of the Assessment Act.)

(*r*) It does not appear to be necessary that the By-law should state the rate to be calculated at so much in the dollar on the *actual* value

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(6.) The By-law, unless it is for a work payable by local assessment (*s*) shall recite: (*ss*) (1.) The amount of the debt which such new By-law is intended to create, and, in some brief and general terms, the object for which it is to be created; (2) The total amount required by this Act to be raised annually by special rate for paying the new debt and interest; (3) The amount of the whole ratable property of the Municipality according to the last revised, or revised and equalized assessment rolls; (4) The amount of the existing debt of the Municipality, showing the interest and principal separately and how much (if any) principal or interest is in arrears; and (5) The annual special rate in the dollar for paying the interest and creating an equal yearly sinking fund for paying the principal of the new debt, according to this Act; *(or in case the debt is payable under the provisions of section* two hundred and fifty (*a*) for paying the instalments of principal and interest, as they respectively become payable.) (*t*) *Vide* 29-30 V. c. 51, s. 226, sub. 1-6.

Recitals in: (1) Amount and object of debt;

(2) Amount to be raised annually;

(3) The value of the ratable property

(4) Amount of existing debt;

(5) Special rate for interest and sinking fund.

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of the ratable property of the Municipality. (*Tylee* v. *Waterloo*, 9 U. C. Q. B. 572.) In the absence of anything to the contrary, the Court will intend that the Council has acted according to law. (*Ib.*) The Council is empowered to apply surplus income and other surplus funds to the payment of the debt. (Sec. 269.)

(*s*) As to which see sec. 249.

(*ss*) It was at one time held that the omission of a prescribed recital did not invalidate the By-law; that the statute was directory and not imperative. (See *In re Sells and St. Thomas*, 3 U. C. C. P. 291; see, however, note *t*, *infra*.)

(*t*) The By-law should describe the debts and their amounts. (See *Canada Co.* v. *Middlesex*, 10 U. C. Q. B. 93; *Ex parte Hayes and Toronto*, 7 U. C. C. P. 255.) These may be shown in the recitals of the By-law. Where a By-law recited that the amount of the whole ratable property of the Township, according to the last assessment returns, was £114,756, and that it would require the annual rate of 2½d. in the pound as a special rate for payment, &c., and then enacted that a special rate of 2½d. should be levied to pay the principal and interest of the loan to be raised under the By-law, and that the proceeds of such special rate should be applied solely to the payment, &c., until the same be fully paid and satisfied: *Held*, that the recital as to the amount of ratable property and the assessment returns was sufficient, and that it sufficiently appeared that that the amount was to be raised in each year. (*In re Cameron and East Nissouri*, 13 U. C. Q. B. 190.) In one part of the By-law the Reeve was empowered to issue debentures for such sums as should be from time to time required for the purposes mentioned, but not to exceed in the whole £10,000. In subsequent clauses a special rate was imposed to pay "the said sum of £10,000," and the application of "the said sum of £10,000" was pointed out. The debentures were directed to be made payable "within twenty years of the time

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By-law for a work payable by local assessment must recite: (1) Amount and object of debt; (2) Amount to be raised annually; (3) Value of real property ratable; (4) Special rate for interest and sinking fund, &c.

**249.** If the By-law is for a work payable by local assessment (*a*) it shall recite:—(*aa*) (1) The amount of the debt which such By-law is intended to create, and, in some brief and general terms, the object for which it is to be created; (2) The total amount required by this Act to be raised annually by special rate for paying the debt and interest under the By-law; (3) The value of the whole real property ratable under the By-law as ascertained and finally determined as aforesaid; (4) The annual special rate in the dollar or per foot frontage, or otherwise, as the case may be, for paying the interest and creating a yearly sinking fund for paying the principal of the debt, or for discharging instalments of principal, according to the foregoing provisions of this Act; (*or in case the debt is payable under the provisions of section two hundred and fifty* for paying the instalments of principal and interest, as they respectively become payable;) (5) That the debt is created on the security of the special rate settled by the By-law, and on that security only. (*b*) *Vide* 29-30 V. c. 51, s. 303, sub. 5.

(5) That debt created on security of special rate.

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that this By-law shall come into operation." *Held*, that the amount of the loan, and the time when the debentures were to be made payable, was stated with sufficient certainty. (*Ib.*) Where a By-law provided that the site of an old town-hall should be disposed of, and any money above the proceeds of the hall required for the erection of a new one, should be levied on the ratable property in the Municipality, but did not fix the amount or the rate to be levied, this part of the By-law was held bad. (*In re Hawke and Wellesley*, 13 U. C. Q. B. 636.) When errors in computation only are shown in a By-law, though extensive, the Court will lean strongly to support it, especially when it has been acted upon. (*Secord and Lincoln*, 24 U. C. Q. B. 142; *Grierson and Ontario*, 9 U. C. Q. B. 623.) Not only the rate must be mentioned in the By-law, but the amount to be raised thereby (see *Tylee and Waterloo*, 9 U. C. Q. B. 572), and also the purpose or object for which it is required. (*Ib.*) Thus, "to pay off two debentures held by William Allan, for erecting the court-house in said district" (*Ib.* p. 588), or "for the purpose of liquidating the sum of £1,500 due to the Gore Bank, and the sum of £500 due by the District to Alexander Drysdale, Esquire." (*Ib.*) Besides, the By-law must recite the amount of the whole ratable property of the Municipality, according to the last revised or revised and equalized assessment rolls. (See *McCormick* v. *Oakley*, 17 U. C. Q. B. 345.)

(*a*) The general rule is to raise money required for Municipal purposes by rate on all the ratable property of the Municipality. One of the exceptions is where the money is needed for expenditure in a local improvement asked for by the local ratepayers, or a certain proportion of the local ratepayers to be thereby benefited. (See further, sec. 464 and notes thereto.)

(*aa*) See note *ss* to sec. 248.

(*b*) See note *t* to sec. 248.

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**250.** In any case of passing a By-law for contracting a debt, by borrowing money for any purpose, (*c*) the Municipal Council may in its discretion make the principal of such debt repayable by annual instalments during the currency of the period (not exceeding thirty years if the debt is for gas or water works, and not exceeding twenty years if the debt is for any other purpose) within which the debt is to be discharged; such instalments to be of such amounts that the aggregate amount payable for principal and interest in any year shall be equal, as nearly as may be, to what is payable for principal and interest during each of the other years of such period; and may issue the debentures of the Municipal Corporation for the amounts, and payable at the times, corresponding with such instalments, together with interest, annually or semi-annually, as may be set forth and provided in such By-law. (*d*) Such By-law shall set forth the annual special rate to be raised in each year during the period of the currency of the debt, which shall be sufficient according to the amount of ratable property appearing by the last revised or revised and equalized Assessment Rolls, before the passing of the By-law to discharge the several instalments of principal and the interest accruing due on said debt, as the said instalments and interest become respectively payable, according to the terms of said By-

Municipal council may make principal repayable by equal annual instalments.

What by-law shall set out.

(*c*) See note *k* to sec. 248.

(*d*) The ordinary mode is to provide for the raising of a certain amount for the annual interest and a certain amount for the annual sinking fund, so as, within the period specified in the By-law, to discharge the debt and interest. (See subs. 3 & 4 of sec. 248, and notes thereto.) But the Council in its discretion may now, under this section, make the principal repayable by annual instalments. When this mode is adopted, it obviates the necessity for the accumulation and investment of the Sinking Fund. But still there is the limitation that the instalments shall be "of such amounts that the aggregate amount payable for principal and interest in any year shall be *equal*, as nearly as may be, to what is payable for principal and interest during each of the other years" of such period. Had the limitation been that the instalments should be equal in each year, it would have been more easily understood; but it applies as well to the interest as the principal, and it is declared that the aggregate amount for principal and interest in any year shall be equal, as nearly as may be, to what is payable for principal and interest during each of the *other* years. With each payment of an instalment for principal, the interest would, under ordinary circumstances, be reduced, and so fluctuate from year to year. Whether this would be a compliance with the provision that the aggregate in each year for principal and interest shall be equal, "as nearly as may be," remains to be decided.

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law; (*e*) and in cases within this section, it shall not be necessary that any provision be made for the creation of a sinking fund. (*f*) *New.*

By-laws for raising money not for ordinary expenses must (with certain exceptions) receive assent of electors.

**251.** Every By-law (except for drainage, as provided for under the four hundred and forty-seventh section of this Act, or for a work payable entirely by local assessment) (*g*) for raising upon the credit of the Municipality any money not required for its ordinary expenditure, and not payable within the same Municipal year, shall, before the final passing thereof, receive the assent of the electors of the Municipality in the manner provided for in the two hundred and thirty-first section of this Act; (*h*) except that in Counties the County Council may raise by By-law or By-laws, with

Exception as to by-law for contracting debts for a sum or sums not exceeding in any year $20,000 above ordinary expenses.

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(*e*) See note *h* to sec. 13 of the Assessment Act, and note *i* to sec. 14 of the same Act.

(*f*) For reasons already explained in note *d* to this section.

(*g*) See sec. 249.

(*h*) "I incline to think that any appropriation of moneys for other than ordinary purposes, whether payable within the year or not, requires the express sanction of the ratepayers. I am led to this conclusion from the exception in regard to County Councils." (*Per* Spragge, V.C., in *Edinburgh Life Assurance Co.* v. *St. Catharines*, 10 Grant, 388. See further, note *h* to sec. 258.) By an Act of the Legislature the Town of St. Catharines was authorized to issue debentures to the amount of £45,248, for the liquidation of which a special rate was directed to be levied, the proceeds of which were directed to be invested and form a sinking fund for this purpose. By the same Act the Town was prohibited from passing any By-law to create any new debt extending beyond the year in which the By-law was passed, except for the construction of water works, until the debt was reduced to £25,000. The special rate authorized to be imposed had been duly levied and collected, but instead of investing the same to form a sinking fund for the payment off of the debentures, it was alleged it had been applied to the general purposes of the Town. The defendants denied the misapplication of the fund, but did not show how it had been applied. And, with a view of inducing the County Council to remove the County Town of Lincoln from Niagara to St. Catharines, the Town Council of St. Catharines, without any By-law authorizing the same, contracted with certain builders to erect a gaol and court house for the use of the County, at an outlay of £3,000, to be completed in two years. Upon an application made at the instance of the holders of the debentures issued under the first mentioned Act, the Court restrained the Town from suffering or permitting the buildings to be proceeded with. On an appeal to the full Court the injunction was dissolved, it appearing that the contract which had been entered into between the Corporation and the contractor had been cancelled, and that no liability had been incurred by the Corporation extending beyond the current year. (*Edinburgh Life Assurance Co.* v. *St. Catharines*, 10 Grant,

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out submitting the same for the assent of the electors of such County or Counties, for contracting debts or loans, any sum or sums, not exceeding in any one year twenty thousand dollars over and above the sums required for its ordinary expenditure. (*i*) *Vide* 29-30 V. c. 51, ss. 227 and 305.

Certain by-laws of county council not to be valid unless passed at meeting specially called and held three months after notice, &c.

**252.** No such By-law of a County Council for contracting any such debt or loan for an amount not exceeding in any one year twenty thousand dollars, over and above the sums required for its ordinary expenditure, (*k*) shall be valid, (*l*) unless (*m*) the same is passed at a meeting of the Council specially called for the purpose of considering the same, (*n*) and held not less than three months after a copy of such By-law as the same is ultimataly passed, (*o*) together

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379.) If it had been shown that any Act of the Corporation would have had the effect of incurring a liability payable in a future year, the injunction would have been retained to the hearing. (*Ib.*)

(*i*) It will be observed that the exception only extends to the raising of any sum or sums, not exceeding in any one year $20,000 "over and above the sums required for ordinary expenditure." The general rule would appear to be that a By-law of any Municipal Council, to raise money not required for ordinary expenditure, must be submitted to the electors. (See preceding note.) To that rule an exception is created in favour of a County Municipality under the circumstances here stated, and subject to the restrictions contained in the next section. It is not necessary for a County, when passing a By-law authorizing the issue of debentures for the sole purpose of exchanging or redeeming outstanding debentures of the County, to comply with the formalities of sec. 248 of this Act. (See 33 Vic. cap. 26, s. 17.)

(*k*) See note *h* to sec. 251.

(*l*) In other words, shall be illegal. As to setting aside a By-law for illegality, see sec. 240 and notes thereto.

(*m*) The requisites to the validity of the By-law appear to be—

1. That it be passed at a meeting specially called for the purpose of considering the same.

2. Such meeting to be held not less than three months after a copy of the By-law as the same is ultimately passed, together with a notice of the day appointed for the meeting, has been published.

3. Such publication to be in some newspaper issued weekly or oftener within the County, or, if there be no such public newspaper, then in a public newspaper published nearest to the County, and in *either case* to be published in a newspaper, if there be one, in the County Town.

(*n*) See note *f* to sec. 178.

(*o*) If, between publication and passing, a material alteration is made in the By-law, the By-law will be invalid. (*In re Bryant and Pittsburgh*, 13 U. C. Q. B. 347.)

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with a notice of the day appointed for such meeting, has been published in some newspaper issued weekly or oftener within the County; or, if there be no such public newspaper, then in a public newspaper published nearest to the County; (*p*) which said notice may be to the effect following: (*q*)

FORM OF NOTICE.

Form of notice.

The above is a true copy of a proposed By-law to be taken into consideration by the Municipality of the County (*or* United Counties) of at in the said County (*or* United Counties), on the day of 18 , at the hour of o'clock in the noon, at which time and place the members of the Council are hereby required to attend for the purpose aforesaid. 29-30 V. c. 51, s. 228; 37 V. c. 16, s. 8.

*G. H.*, Clerk.

When part only of money raised, by-law may be repealed as to residue.

**253.** When part only of a sum of money provided for by a By-law has been raised, the Council may repeal the By-law as to any part of the residue, and as to a proportionate part of the special rate imposed therefor, (*r*) provided the repealing By-law recites the facts on which it is founded, and is appointed to take effect on the thirty-first day of December in the year of its passing, and does not affect any rates due or penalties incurred before that day, and provided the By-law is first approved by the Governor in Council. 29-30 V. c. 51, s. 234.

Proviso.

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(*p*) See note *j* to sec. 231.

(*q*) See note *h* to sec. 238.

(*r*) It is an erroneous impression, when once a Municipal Council has determined to contract a loan, in order to aid, for example, in advancing a public work, that the whole matter of the By-law passed for that object is entirely out of their control, and not merely such parts of it as are necessary for securing those who have advanced money under its provisions. (*In re Hill and Walsingham*, 9 U. C. Q. B. 310.)

No By-law passed under this section can take effect—

1. Unless it recite the facts on which it is founded.

2. Unless it be appointed to take effect on the 31st December in the year of its passing.

3. Unless it be approved by the Lieutenant-Governor in Council.

4. Nor if it affect any rates due, or penalties incurred, before the day it takes effect.

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**254.** After a debt has been contracted, the Council shall not, until the debt and interest have been paid, repeal the By-law under which the debt was contracted, or any By-law for paying the debt or the interest thereon, or for providing therefor a rate or additional rate, or appropriating thereto the surplus income of any work or of any stock or interest therein, or money from any other source; and the Council shall not alter a By-law providing any such rate so as to diminish the amount to be levied under the By-law, except in the cases herein authorized, (*s*) and shall not apply to any other purpose any money of the Corporation which, not having been previously otherwise appropriated by any By-law or resolution, has been directed to be applied to such payment. (*t*) 29-30 V. c. 51, s. 235.

Until debt paid, certain by-laws cannot be repealed, nor altered. Exceptions.

**255.** No officer of the Municipality shall neglect or refuse to carry into effect a By-law for paying a debt under colour of a By-law illegally attempting to repeal such first mentioned By-law, or to alter the same so as to diminish the amount to be levied under it. (*tt*) 29-30 V. c. 51, s. 207.

No officer to neglect, &c., to carry out by-law for payment under colour of illegal by-law.

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(*s*) The provisions of this section are necessary for the security of creditors. It is enacted, first, that no Council shall either repeal a By-law under which a debt was contracted, or, secondly, alter a By-law providing the rate so as to diminish the amount to be levied under the By-law, &c. The By-law, however, may, under certain circumstances, be in part repealed, pursuant to sec. 253. So the rate may, under certain circumstances, be reduced, pursuant to secs. 260 & 261.

(*t*) This requires the sinking fund to be left untouched, and prohibits the Council withdrawing any money transferred thereto, or otherwise applying any funds that have been appropriated thereto. (See note *h* to sec. 251.)

(*tt*) The object of this section is, to compel Municipal Corporations and their officers to keep faith with creditors. When the latter advance money upon the security of a By-law for its repayment in whole or in part, within a specified period at a specified rate, any By-law attempting to repeal such mentioned By-law or altering the same, so as to diminish the amount to be levied under it, would be a fraud, whether so designed or not. (But see sec. 253, *et seq.*) Besides, it is the duty of the Treasurer of every Municipality to see that the money collected under such By-law is properly applied to the payment of interest and principal of debentures issued under the By-law. (Sec. 296.) The 207th section of 29 & 30 Vic. cap. 51, provided that an officer guilty of such neglect as specified in this section should be guilty of a misdemeanor, and be punished by fine or imprisonment, or both, at the discretion of the Court whose duty it might be to pass sentence upon him. This being matter relating to crime and criminal procedure, and so within the exclusive jurisdiction of the Dominion Legislature, is omitted from the section here annotated. (See note *v* to sec. 304.)

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Municipal Councils may purchase public works, &c., and contract debts with Crown,

**256.** Any Council may contract a debt to Her Majesty, in the purchase of any of the public roads, harbours, bridges, buildings or other public works in Ontario, whether belonging to this Province or to the Dominion of Canada, or of any claim in respect of such works, (*a*) and may execute such bonds, deeds, covenants, and other securities to Her Majesty, as the Council may deem fit, for the payment of the price of any such public work, or claim already sold or transferred, or which may be sold or transferred, or agreed to be sold or transferred to the Municipal Corporation, and for securing the performance and observance of all or any of the conditions of sale or transfer; and may also pass all

(*a*) The statute 12 Vic. cap. 5, sec. 12, authorized the Governor in Council to contract with any Municipal Council or other local Corporation, for the transfer to them of any of the public roads, harbours, bridges, &c., which it might be more convenient to place under the management of such local authorities. By statute 14 and 15 Vic. cap. 124, any Municipal Corporation in Upper Canada might contract a debt to Her Majesty in the purchase of any roads, &c., and the Municipality might enter into, make or execute all or any bonds, deeds, covenants or other securities to Her Majesty, which such Municipality might deem fit, for the payment of the amount of purchase money of any such work, and for securing the performance of any conditions of sale; and might also pass all By-laws for any of the purposes; and such By-laws, debts, bonds, deeds, covenants or other securities were to be binding and valid on such Municipality to all intents and purposes, though no special or other rate per annum should be settled or imposed, to be levied as provided under the 177th section of the Municipal Corporations Act of 1849. But by section 2, the Corporation was nevertheless authorized, in any By-law for the creation of such debt, or for making or executing any such bonds, deeds or other securities, as aforesaid, to Her Majesty, or in any other By-law by the Corporation, to impose a special rate per annum of such amount as the Municipality might deem expedient, for payment and discharge of such debts, bonds, covenants or other securities, or some part thereof; and every such By-law should be valid and binding on the Corporation, though the rate settled or imposed should be less than was required by the 177th section of the Municipal Corporations Act for 1849; and all provisions of that Act (except in so far as they were inconsistent with the Act then being passed) were to apply and extend to every such By-law, and the moneys to be raised thereby, as fully as they would extend to any By-law enacted by any such Municipality for the creation of any debt or raising any loan, as provided in said 177th section, and to the moneys thereby raised. By statute 16 Vic. cap. 181, s. 39, it was enacted that none of the provisions of the 4th or 16th sections of the Municipal Corporations Amendment Act of 1851, should affect or apply to any By-law passed or to be passed by any Municipality in Upper Canada for any of the purposes mentioned in 14 & 15 Vic. cap. 124, or to any debts, bonds, deeds, covenants or other securities contracted, made or executed to Her Majesty, under the provisions of that Act, or for any of the purposes therein mentioned. By statute 18 Vic. cap. 133, it was enacted, in effect, that

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necessary By-laws for any of the purposes aforesaid; (*b*) and all such By-laws, debts, bonds, deeds, covenants and other securities shall be valid although no special or other annual rate has been settled or imposed to be levied in each year, as provided by sections two hundred and forty-eight to two hundred and fifty of this Act. (*c*) *Vide* 29-30 V. c. 51, s. 229, sub. 1.

Although no special or other annual rate settled.

**257.** The Council may, in any By-law to be passed for the creation of any such debt, (*d*) or for the executing of any such bonds, deeds, covenants or other securities as aforesaid, to Her Majesty, (*e*) or in any other By-law to be passed by the Council, settle and impose a special rate per annum, of such amount as the Council may deem expedient, in addition to all other rates whatsoever, to be levied in each year upon the assessed ratable property within the Municipality, for the payment and discharge of such debts, bonds, deeds, covenants or other securities, or some part thereof, and the By-laws shall be valid, although the rate settled or imposed thereby be less than is required by the sections last mentioned; and the said sections shall, so far as applicable, apply and extend to every such By-law, and the moneys raised or to be raised thereby, as fully in every respect as such provisions would extend or apply to any By-law enacted by any Council for the creation of any debt as provided in the said sections, or to the moneys raised or to be raised thereby. (*f*) 29-30 V. c. 51, s. 229, sub. 2.

Rates may be imposed for the payment of debts contracted with the Crown for such works.

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no By-law, to be passed for raising money upon the credit of any City, Town, Township or Village Corporation, should have force or effect until the approval of the Municipal electors should have been obtained. All these provisions were repealed by the Municipal Institutions Act of 1858; and sec. 226 of Con. Stat. U. C. cap. 54 (of which sec. 229 of 29 & 30 Vic. cap. 51 was a re-enactment), was in effect substituted for them. The fair result would seem to be that none of the sections 248 to 250 of this Act, relating to By-laws creating debts, extend to By-laws made for the purchase of public works, except in the manner and to the extent pointed out in the second paragraph of the section here annotated, and that such By-laws would, at all events if passed by a County, be valid, although not containing any special rate, and although not assented to by the ratepayers. (See *In re O'Neil and York and Peel*, 15 U. C. C. P. 249.)

(*b*) See note *u* to sec. 304.

(*c*) See note *a* to this section.

(*d*) See note *a* to this section.

(*e*) See note *a* to sec. 255.

(*f*) See note *l* to sec. 248.

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DIVISION VII.—BY-LAWS RESPECTING YEARLY RATES.

*Amount and Limit of Rate. Sec. 258.*
*Power to Exempt. Sec. 259.*
*Reduction of Special Rate. Sec. 260.*
*Formalities in By-law, therefor. Sec. 261.*

Yearly rates to be levied, sufficient to pay all debts payable within the year.

Aggregate rate limited to two cents in the dollar.

**258.** The Council of every Municipal Corporation, and of every Provisional Corporation, shall assess and levy on the whole ratable property within its jurisdiction, (*g*) a sufficient sum in each year to pay all valid debts of the Corporation, whether of principal or interest, falling due within the year; (*h*) but no such Council shall assess and levy in

(*g*) The assessment is to be on "the *whole* ratable property, &c." An assessment, therefore, on a portion of the ratable property, such as wild lands, would be invalid. (See sec. 8 of the Assessment Act and notes thereto.)

(*h*) The power given is to assess and levy, &c., a sufficient sum in *each* year to pay all *valid* debts falling due *within the year*. It is not easy to define what is meant by "a valid debt." It may be described as a debt which the Corporation is legally liable to pay, and the payment of which may be enforced by process of law. The word "debt" must be taken as used in its most comprehensive sense, "as something due from one to another." (*Per* Spragge, C. J., in *Wilkie and Clinton*, 18 Grant, 559.) Then the assessment is to be to pay all valid debts "falling due *within the year*." The general rule is that Municipal bodies ought not, in one year, to levy a rate to pay debts due in a past year. The ratepayers of a locality should not be required to pay for the benefits which the ratepayers of a previous year enjoyed. Each year's debts should be paid by that year's assessments, unless in those expressly authorized cases where a deviation is allowed by statute. (*Per* A. Wilson, J., in *Haynes* v. *Copeland et al*, 18 U. C. C. P. 167.) After a lapse of years the ratepayers would be a totally different body from that which it was a few years previously. "Purchasers, availing themselves of their right of inspecting the annual reports of the Auditors of the liabilities of the ratable property in the City, have acquired property which, in the absence of any such liability appearing as that which is now asserted, they may fairly claim to hold discharged of any such liability as that now sought to be imposed upon it. To charge the present owners of real property with this liability would seem to partake of the character of a fraud upon them, &c." (*Per* Gwynne, J., in *Frontenac* v. *Kingston*, 20 U. C. C. P. 64.) The general inconvenience of retrospective rates has in England been long known and recognized in the Courts of Law, on the ground that succeeding ratepayers ought not to be made to pay for services of which their predecessors have had the benefit. (See *The King* v. *Haworth*, 12 East, 556; *Cortis* v. *Kent Waterworks Co.*, 7 B. & C. 314; *The King* v. *Flintshire*, 5 B. & Al. 761; *Woods* v. *Reed*, 2 M. & W. 777; *Jones* v. *Johnson*, 5 Ex. 862; s. c. in Error, 7 Ex. 452.) One object of the law, as ratepayers fluctuate, is to protect present inhabitants from being burthened with the expenses of their predecessors. (*The King* v.

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any one year more than an aggregate rate of two cents in

*Wavell et al*, Doug. 116; *The King* v. *Goodcheap*, 6 T. R. 159; *Attorney-General* v. *Wigan*, 18 Jurist, 299.) As a rule, money required for Municipal purposes ought to be raised, as the law directs, beforehand, instead of being in any manner or by any person advanced, in the expectation of reimbursement by the Municipality. (See *The King* v. *Haworth*, 12 East, 556; *Tawney's Case*, 2 Ld. Rayd. 1009; *Dawson* v. *Wilkinson*, Cases Temp. Hard. 381. But see *Burnham* v. *Peterborough*, 8 Grant, 366; s. c. 7 U. C. L. J. 73.) It is for reasons such as these that the power to assess under this section is restricted to debts falling due "within the year." (See *Clapp* v. *Thurlow*, 10 U. C. C. P. 533.) The result appears to be that no Municipal Council has power, without the consent of the electors, to authorize the expenditure of money for purposes not falling under the head of ordinary expenditure, without having the money in hand to meet the demand, and without making provision, by rate or otherwise, to raise the required amount to meet the demand when due. (*McMaster* v. *Newmarket*, 11 U. C. C. P. 398; s. c. 8 U. C. L. J. 44; see also *Gibb and Moore*, 27 U. C. Q. B. 150; and *Grant and Puslinch*, *Ib.* 154.) The policy of the law appears to be that all debts, where there is not money in hand to meet them, should be met by a rate in *anticipation*, or that otherwise the amount should be raised by rate within the current year. By the observance of this policy, abuses may be prevented. By the neglect of it, abuses will assuredly arise. If there were no such policy to be observed, Council after Council might allow arrears of debts to accumulate year after year, so as to bind future Councils and to burthen future ratepayers. If this were permitted, there would be no check upon the extravagance of Municipal Councils. The Legislature, in order to protect the interests of the ratepayers of the several Municipalities against abuse of the powers entrusted to the Municipal Councils, and which have authority for many purposes to bind them, have provided certain restrictions and limitations upon their powers. It is for those who contract with the Municipal Councils to see for themselves that the powers given are exercised with a due regard to such restrictions and limitations. If they neglect this, they have their own want of caution to thank for any inconvenience or loss they may suffer in consequence, and they certainly should not expect that such neglect should operate in their favour, and furnish an argument for disregarding those wise provisions of law which are designed to protect ratepayers from reckless or unauthorized expenditure or incurring of debts by Municipal Councils. (See *Mellish* v. *Brantford*, 2 U. C. C. P. 35; *Scott et al* v. *Peterborough*, 19 U. C. Q. B. 469; *Wright* v. *Grey*, 12 U. C. C. P. 479; *Cross* v. *Ottawa*, 23 U. C. Q. B. 288; *Haynes* v. *Copeland*, 18 U. C. C. P. 150.) It has therefore been held, that a Municipal Corporation, sued for work done, may plead that the cause of action arose for and concerning a debt incurred and falling due in a previous year, which was not within the ordinary expenditure of the Corporation for that year, and for which no rate was by By-law imposed. (*Ib.*) In such a case it would be held that there was no "valid debt." But suppose a valid debt incurred in one year, and the Corporation omit to levy it in that year, does it become a less valid debt the next year? Is the debt paid or the duty extinguished by reason of the omission? (*Per* John Wilson, J., in *Haynes* v. *Copeland*, 18 U. C.

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the dollar on the actual value, exclusive of school rates; (*i*)

C. P. 168.) If the debt be not paid or the duty discharged, plaintiff should be allowed to recover a judgment. The inability to make the judgment productive is no defence to the action, nor any reason that the judgment should not be obtained. (See *Pallister* v. *Gravesend*, 9 C. B. 774; *Payne* v. *Brecon*, 3 H. & N. 572; *Bush* v. *Martin*, 2 H. & C. 311; *Hartnall* v. *Ryde Commissioners*, 4 B. & S. 361; *Hartley* v. *Mare*, 19 C. B. N. S. 85; *Scott* v. *Burgess and Bathurst School Trustees*, 19 U. C. Q. B. 28; *Frontenac* v. *Kingston*, 30 U. C. Q. B. 584; s. c. 32 U. C. Q. B. 348.) In some of the United States of America there is an express prohibition against contracting debts in any year subsequent to the current year, and in such cases the debts are declared illegal and void. (See *Jonas* v. *Cincinnati*, 18 Ohio, 318; *Goodrich* v. *Detroit*, 12 Mich. 279; *Philadelphia* v. *Flanigen*, 47 Penn. St. 21; *Johnson* v. *Philadelphia*, *Ib.* 382; *Bladen* v. *Philadelphia*, 60 Penn. St. 464; *Wallace* v. *St. Jose*, 29 Cal. 180; see also, *Dively* v. *Cedar Falls*, 27 Iowa, 227; *Davenport Gas Co.* v. *Davenport*, 13 Iowa, 229.)

(*i*) The limitation as to the amount of rate was first introduced by the 29 & 30 Vic. cap, 51, sec. 225. The rates in some Municipalities were, before the passing of that Act, so rapidly increasing as to cause alarm among the ratepayers, and seriously diminish the value of property and so threaten to impoverish the ratepayers. The remedy applied is that of limiting the aggregate annual taxation to "two cents in the dollar on the actual value, exclusive of school rates." If an attempt were made to exceed the restriction, no doubt the Court of Chancery would, upon a proper case being made out, interfere by injunction. (See *The Edinburgh Life Insurance Co.* v. *St. Catharines*, 10 Grant, 379.) The limit of two cents in the dollar includes the special sinking fund account to be levied in respect of past debts. (*Wilkie* v. *Clinton*, 18 Grant, 557.) Where an Act prohibited Municipalities from "contracting any debt or pecuniary liability, without fully providing in the ordinance creating the debt the means of paying the principal and interest of the debt so contracted," it was held inapplicable to ordinary street work, forming part of the current expenses of the Corporation, payable out of current revenues. (*Reynolds* v. *Shreveport*, 13 La. An. 326.) So where the words of the Act were that "the Council shall not create or permit to accrue any debts or liabilities which shall exceed, &c.," it was held to have no relation to liabilities arising *ex delicto*. (*McCracken* v. *San Francisco*, 16 Cal. 591.) Whether special power to a Municipal Corporation to aid particular railway enterprizes does or does not *pro tanto* repeal a limitation as to power of taxation, has, in the United States, been a subject of much controversy and of judicial conflict. (*Butz* v. *Muscatine*, 8 Wall. 575; *Clark* v. *Davenport*, 14 Iowa, 494; *Learned* v. *Burlington*, 2 Am. Law Reg. N. S. 394, and note; *Leavenworth* v. *Norton*, 1 Kansas, 432; *Burnes* v. *Achison*, 2 Kansas, 254; *Fosdick* v. *Perrysburg*, 14 Ohio St. 472; *Commonwealth* v. *Pittsburg*, 34 Pa. St. 496.) The inclination of the Supreme Court seems to be in favour of that construction which restricts such a limitation to the exercise of the power of taxation in the ordinary course of Municipal action. (*Amey* v. *Alleghany*, 24 How. (U. S.) 364.) Generally speaking, the Legislature of Ontario, when intending that Municipal Corporations shall have

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Provided always, if in any Municipality the aggregate amount of the rates necessary for the payment of the current annual expenses of the Municipality, and the interest and the principal of the debts contracted by such Municipality at the time of the passing of this Act shall exceed the said aggregate rate of two cents in the dollar on the actual value of such ratable property, the Council of such Municipality shall levy such further rates as may be necessary to discharge obligations already incurred, but shall contract no further debts until the annual rates required to be levied within such Municipality are reduced within the aggregate rate aforesaid: (*k*) Provided that this shall not affect any special provisions to the contrary contained in any special Act now or hereafter in force. (*l*) 29-30 V. c. 51, s. 225.

Provision when such aggregate not sufficient to pay debts payable within the year.

Proviso.

**259.** Every Municipal Council shall have the power of exempting any manufacturing establishment, in whole or in part, (*m*) from taxation for any period not longer than ten

Power to exempt factories from taxation.

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power to aid Corporations notwithstanding the two cent limitation, so declares in the particular Act of Incorporation. (See sec. 5 of 36 Vic. cap. 97, Ont., as an example.)

(*k*) The rule established by this section is, that no Municipal Council shall assess and levy in any one year more than an aggregate rate of two cents in the dollar on the actual value, exclusive of school rates. To this rule there are, in and by the section, two exceptions created:

1. A Municipality in which the aggregate amount of the rates necessary for the payment of *current annual expenses*, and the interest and the principal of the debts contracted by such Municipality at the time of the passing of the Act, shall exceed the aggregate rate of two cents in the dollar.

2. A Municipality authorized to exceed the rate of two cents in the dollar by special provision to that effect contained in any special Act now or hereafter in force.

In the case of either exception, it is made the duty of the Municipality to levy such further rates as may be necessary to discharge obligations already incurred, but such Municipality is not to contract any further debts until the annual rates are reduced within the aggregate of two cents.

(*l*) It is of course in the power of the Local Legislature to permit the limit to be exceeded either generally or for particular purposes. (See *Amey* v. *Allegheny*, 24 How. (U. S.) 364; *Wallace* v. *San Jose*, 29 Cal. 180; *Wyncoop* v. *Society*, 10 Iowa, 388; *Rice* v. *Keokuk*, 15 Iowa, 569; *Gibbon* v. *Railroad Co.* 36 Ala. 410; *Foote* v. *Salem*, 14 Allen, 87.) It has done so notably in Acts for the aid of local railway enterprises.

(*m*) The object of this section is to enable Municipal Councils to encourage manufacturing establishments within their limits. The



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years, and to renew this exemption for a further period not exceeding ten years. (*n*) 33 V. c. 26, s. 15.

When the rate imposed by by-law may be reduced by by-law.

**260.** In case in any particular year, one or more of the following sources of revenue, namely: (1.) The sum raised by the special rate imposed for the payment of a debt, and collected for any particular year; and (2.) The sum on hand from previous years; and (3.) Any sum derived for such particular year from the surplus income of any work,

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section is not in terms restricted to *new* manufacturing establishments. It authorizes the exemption to be made as to *any* manufacturing establishment, in whole or in part, apparently extending to old as well as new establishments. Whether the introduction of the words "in whole or in part" enables the Corporation to discriminate in favour of new manufactures as against old ones of the same class or kind, remains to be decided. It was held, under a statute enabling Municipal Councils to exempt from taxation "manufactures of woollens, cottons, glass, paper, &c.," that a By-law exempting new manufactures as against old manufactures in the same line of business was void. (*In re Pirie and Dundas*, 29 U.C. Q. B. 401.) Wilson, J., in delivering the judgment of the Court, said, "I do not think it would be against the statute to provide that *all* cotton manufacturers should be exempt from taxation, because it places all persons of the same line of business on the same footing, without giving any advantages or privileges to one or more of that trade over the others. * * * In no case is A. of the cotton or any other particular trade to get the benefit which B. of the same trade is not also to get. For this is a monopoly of the worst description, and it cannot be necessary either for the proper stimulus of the *trade*, though it may stimulate A. very wonderfully in that trade, but then only at the expense of B." (*Ib.* p. 407; see further, sec. 224 and notes thereto.) The general rule is, that the burden of taxation should fall equally, and for this reason statutes exempting particular persons or particular property from taxation are construed strictly. (See notes to sec. 9 of the Assessment Act.) The Municipal Council may impose reasonable conditions to be complied with by those claiming exemption under this section. (See *In re Pirie and Dundas*, 29 U. C. Q. B. 401.)

(*n*) The power is restricted in the first instance to an exemption for ten years, with a power to renew the exemption for a further period not exceeding ten years—in all, twenty years. The power to renew is not given from time to time, but only once to be exercised. (See *Neilson* v. *Jarvis*, 13 U.C.C.P. 176, and *Bank of Montreal* v. *Taylor*, 15 U.C.C.P. 107.) It is a question whether the By-law can be repealed within the period of exemption mentioned therein, after its terms have been accepted and acted upon by the persons in whose favour it is passed. In other words, the question is whether the By-law is to be looked upon simply as a local law or as a contract. If the former, it may be repealed; if the latter, it cannot be repealed; for one party to a contract cannot rescind it against the will and to the prejudice of the other. (See *East Saginaw Manufacturing Co.* v. *City of East Saginaw*, 2 Am. Rep. 82; s. c. 19 Mich. 259; and *The People ex rel Cunningham et al* v. *Roper*, 35 N. Y. 629.)

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or of any share or interest therein applicable to the sinking fund of the debt; and (4.) Any sum derived from the temporary investment of the sinking fund of the debt, or of any part of it, and carried to the credit of the special rate and sinking fund accounts respectively, amount to more than the annual sum required to be raised as a special rate to pay the interest and the instalment of the debt for the particular year, and leave a surplus to the credit of such accounts, or either of them, (*o*) then the Council may pass a By-law reducing the total amount to be levied under the original By-law for the following year to a sum not less than the difference between such last mentioned surplus, and the annual sum which the original By-law named and required to be raised as a special rate. 29-30 V. c. 51, s. 236.

**261.** The By-law shall not be valid (*p*) unless it recites:

(1.) The amount of the special rate imposed by the origi- Recitals requisite in such by-law.

(*o*) Having discovered the existence of a surplus arising from the sources mentioned in the section, the Council should, first, ascertain the precise amount of the surplus; secondly, ascertain the total amount to be levied for the then next following year; thirdly, deduct the one from the other; and, fourthly, take credit for the result, and reduce the original rate so as to yield no more than what is necessary after taking such credit. To ascertain the surplus, the interest and fee fund appropriation of the current year, as well as an amount equal to the interest of the year following, ought to be deducted from the amount at the credit of the special rate account. In the event of there being a surplus in any year after paying interest and appropriating the necessary sum to the sinking fund, sec. 266 requires such surplus to remain in the special rate account, to be applied if necessary towards the next year's interest. If the surplus exceed the following year's interest, the excess may, under that section, be transferred to the sinking fund account, in reduction of principal. It would appear to be necessary, before dealing with the surplus, to see not only that there is enough at the credit of the special rate account to meet the interest and sinking fund appropriation of the current year, but the interest of the year following. If after such calculation enough is found for the two years and to spare, the excess may be dealt with under the section here annotated—that is, looked upon as so much collected in anticipation of the requirements of the year following, leaving the balance only between it and the amount necessary, according to the original By-law, to be levied. The course therefore recommended is, whenever a surplus is in any year found to exist, to retain to the credit of the special rate account, besides the requirements of the year, a sum equal to the interest of the following year, and then, first, either to carry the balance to the sinking fund account, under sec. 266, or consider it as so much in hand for the next following year, and to reduce the rate of that year so as to make up the deficiency only.

(*p*) See note *l* to sec. 252.

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nal By-law; (*q*) (2.) The balance of such rate for the particular year or on hand from former years; (*r*) (3.) The surplus income of the work, share or interest therein received for such year; and (*s*) (4.) The amount derived for such year from any temporary investment of the sinking fund; (*t*)

Reduced rate to be named.

Nor unless the By-law names the reduced amount in the dollar to be levied under the original By-law; (*u*)

By-law to be approved of by the Governor.

Nor unless the By-law be afterwards approved by the Governor in Council. 29-30 V. c. 51, s. 237.

DIVISION VIII.—ANTICIPATORY APPROPRIATIONS.

*When and how made. Sec. 262, 263.*
*By Senior for Junior Municipality. Sec. 264.*

Anticipatory appropriations may be made.

**262.** In case any Council desires to make an anticipatory appropriation for the next ensuing year in lieu of the special rate for such year, in respect of any debt, the Council may do so, by By-law, (*a*) in the manner and subject to the provisions and restrictions following:

What funds may be so appropriated.

(1.) The Council may carry to the credit of the sinking fund account of the debt, as much as may be necessary for the purpose aforesaid: (*b*)

(*a*) Of any money at the credit of the special rate account of the debt beyond the interest on such debt for the year following that in which the anticipatory appropriation is made; (*c*)

(*b*) And of any money raised for the purpose aforesaid (*d*) by additional rate or otherwise;

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(*q*) See sec. 248, sub. 3.

(*r*) See note *o* to sec. 260.

(*s*) See same note.

(*t*) See same note.

(*u*) See same note.

(*a*) This and the foregoing sections are made for the relief of the ratepayers, provided the security of the creditors be not lessened.

(*b*) "Aforesaid," *i.e.* of making an anticipatory appropriation for the next ensuing year, in lieu of the special rate for such year, in respect of any debt, &c.

(*c*) Here it is clear that a year's interest in advance is to be retained, as directed by sec. 266, and pointed out in note to sec. 260.

(*d*) "Purpose aforesaid."—See note *b* above.

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(*c*) And of any money derived from any temporary investment of the sinking fund ; (*e*)

(*d*) And of any surplus money derived from any Corporation work or any share or interest therein ; (*f*)

(*e*) And of any unappropriated money in the Treasury ; (*g*)

Such moneys respectively not having been otherwise appropriated ;

The sources and application to be stated.

(2.) The By-law making the appropriations shall distinguish the several sources of the amount, and the portions thereof to be respectively applied for the interest and for the sinking fund appropriation of the debt for such next ensuing year ; (*h*)

When moneys retained sufficient, the yearly rate may be suspended for the ensuing year.

(3.) In case the moneys so retained at the credit of the special rate account, and so appropriated to the sinking fund account from all or any of the sources above mentioned, are sufficient to meet the sinking fund appropriation and interest for the next ensuing year, the Council may then pass a By-law directing that the original rate for such next ensuing year be not levied. (*i*) 29-30 V. c. 51, s. 238.

By-law must recite:

**263.** The By-law shall not be valid (*ii*) unless it recites : (*k*)

The original debt and object;

(1.) The original amount of the debt, and, in brief and general terms, the object for which the debt was created ; (*l*)

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(*e*) The investment authorized by sec. 267.

(*f*) See sec. 260 and notes thereto.

(*g*) The right of a Municipal Council to take moneys already appropriated, and apply them to purposes different from the original appropriation, is very questionable. Though sometimes done, it ought never to be encouraged. In the case of appropriations to the sinking fund account of a debt, it cannot be legally done. (See *Edinburgh Life Assurance Co.* v. *St. Catherines*, 10 Grant, 379.)

(*h*) The sources to be one or other of the foregoing.

(*i*) When the surplus, though not equal to the product of the entire rate for a year, is considerable, a By-law may be passed for the proportionable *reduction* of the rate (sec. 260) ; but when the surplus is sufficient to meet the sinking fund appropriation and interest for a year, a By-law may be passed to the effect that for that year the original rate *be not levied*.

(*ii*) See note *l* to sec. 252.

(*k*) This section bears the same relation to sec. 262 that sec. 261 bears to sec. 260. The one is for the reduction of the special rate for a year, the other for the entire cessation of it.

(*l*) See sec. 248, sub. 6, and notes thereto.

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The amount paid;

(2.) The amount, if any, already paid of the debt;

The annual amount for sinking fund;

(3.) The annual amount of the sinking fund appropriation required in respect of such debt;

The amount for sinking fund in hand;

(4.) The total amount, then on hand, of the sinking fund appropriations, in respect to the debt, distinguishing the amount thereof in cash in the Treasury from the amount temporarily invested;

The amount required for interest;

(5.) The amount required to meet the interest of the debt, for the year next after the making of such anticipatory appropriation; and (*m*)

And that it is reserved, &c.

(6.) That the Council has retained at the credit of the special rate account of the debt, a sum sufficient to meet the next year's interest (naming the amount of it), and that the Council has carried to the credit of the sinking fund account a sum sufficient to meet the sinking fund appropriation (naming the amount of it) for such year.

By-law to be approved by Governor.

No such By-law shall be valid unless approved by the Governor in Council. 29 30 V. c. 51, s. 239.

Anticipatory appropriation on separation of municipalities.

**264.** After the dissolution of any Municipal Union, the Senior Municipality may make an anticipatory appropriation for the relief of the Junior Municipality, in respect of any debt secured by the By-law, in the same manner as the Senior Municipality might do on its own behalf. (*n*) 29-30 V. c. 51, s. 240.

## TITLE III.—RESPECTING FINANCE.

DIVISION I.—ACCOUNTS AND INVESTMENTS.
DIVISION II.—COMMISSION OF INQUIRY INTO FINANCES.

### DIVISION I.—ACCOUNTS AND INVESTMENTS.

*Accounts for Special Rate and Sinking Fund. Sec. 265.*
*Surplus on Special Rate, Application of. Sec. 266, 267.*
*Surplus on Special Rate, Investment of. Sec. 268.*
*General Surplus, Application of. Sec. 269–271.*
*Unauthorized Application, Liability for. Sec. 272.*
*Yearly Returns to Government. Sec. 273, 274.*

Two special accounts to be kept: 1, of the special rates; 2, of the sinking fund or instalments of principal.

**265.** The Council of every Municipal Corporation shall keep in its books two separate accounts, one for the special

(*m*) See sec. 260 and notes thereto.

(*n*) An anticipatory appropriation in relief may, it is apprehended, be either one in reduction of the special rate for a given year (sec. 260) or for the cessation of the rate for that year (sec. 262.)

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rate, and one for the sinking fund, or for instalments of principal of every debt, to be both distinguished from all other accounts in the books by some prefix designating the purpose for which the debt was contracted, (*o*) and shall keep the said accounts, with any others that are necessary, so as to exhibit at all times the state of every debt, and the amount of moneys raised, obtained and appropriated for payment thereof. 29-30 V. c. 51, s. 230.

When surplus may be applied to next year's interest, and to sinking fund.

**266.** If, after paying the interest of a debt and appropriating the necessary sum to the sinking fund of such debt, or in payment of any instalment of principal, for any financial year, there is a surplus at the credit of the special rate account of such debt, (*p*) such surplus shall so remain, and may be applied, if necessary, towards the next year's interest; but if such surplus exceeds the amount of the next year's interest, the excess shall be carried to the credit of

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(*o*) Two accounts are mentioned: the special rate account, and the sinking fund or instalments account. The amount of all rates collected and received by the Treasurer will appear in the first, and from it be transferred to the second all such sums as form portions of the sinking fund or instalments fund account. The first or special rate account will constitute the interest account as well as the general account, and the sums required for interest will be retained therein until disbursed, and then be charged thereto. The sums transferred on account of principal to the second or sinking fund or instalments account, will of course be also charged against the first or special rate account, and when transferred be credited to the second or sinking fund or instalments account. It is unnecessary to remark upon the great importance of the accounts being kept with the greatest care and accuracy. The object of keeping the accounts as directed, and any other necessary accounts, is to exhibit *at all times* the state of *every* debt and the amount of moneys raised, obtained and appropriated for payment thereof. In one case the Chancellor of Upper Canada said, "I think I ought not to dispose of this case without observing upon the utter disregard of the provisions of the statute disclosed in the evidence on the part of those officers of the Municipality whose duty it is to see to the keeping of its accounts. The separate accounts, so pointedly required by sec. 230 of the Act (same section as here annotated), seem not to have been kept, but special rates, sinking fund account, and rates and assessments for general purposes, appear to have been mixed up together. The directions of the statute are *so explicit that it was nothing less than most culpable neglect of duty not to follow them.*" (*Wilkie* v. *Clinton*, 18 Grant, 560.)

(*p*) A surplus beyond the interest may arise from the increase of ratable property, &c.; for when a By-law creating a debt, &c., is passed, the ratable property is ascertained *irrespective of any future increase*, &c. (See sub. 5 to sec. 248.)

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the sinking fund account, or in payment of principal of such debt. (*q*) 29-30 V. c. 51, s. 231.

Application of moneys with consent of Governor in Council.

**267.** The Governor in Council may, by order, direct that such part of the produce of the special rate levied, and at the credit of the sinking fund account or of the special rate account as aforesaid, instead of being so invested as hereinafter provided, (*r*) shall, from time to time as the same shall accrue, be applied to the payment or redemption, at such value as the said Council can agree for, of any part of such debt or of any of the debentures representing or constituting such debt, or any part of it, though not then payable, to be selected as provided in such order, (*s*) and the Municipal Council shall thereupon apply and continue to apply such part of the produce of the special rate at the credit of the sinking fund or special rate accounts, as directed by such order. 29-30 V. c. 51. s. 232.

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(*q*) If the surplus of the special rate account in any year exceed the payment of the ordinary calls upon it, together with the next year's interest, the excess may be transferred to the sinking fund account, that is, applied towards the liquidation of principal. Provision is, by sec. 268, made for the investment of the excess.

(*r*) See sec. 268 *et seq.*

(*s*) The object of the special rate is to pay off the debt and interest authorized by the By-law in accordance with the terms of the By-law. (Sec. 248, sub. 4.) The ordinary mode is by annually raising a certain sum for interest and a certain sum for sinking fund or instalment, so as to discharge both principal and interest when payable. If the principal be payable by annual instalments, there will not be such an accumulation to the credit of the sinking fund as if the principal money were payable at the expiration of a fixed period of time. (See sec. 250.) The annual rate in either case is based on the value of the ratable property at the time of the passing of the By-law, "irrespective of any future increase of the ratable property of the Municipality," and irrespective of other incomings specified in the Act. (Sec. 248, sub. 5.) In any view, therefore, there may be an accumulation of money in the nature of surplus to the credit of the fund in advance of what is required to pay the annual obligation under the By-law. Instead of investing the same, provision is by this section made for the application of the money "to the payment or redemption, at such value as the Council can agree for," of any part of the debt, though not payable. This can only be done by order of the Governor in Council. It is intended that the order shall be a continuing one, for it is declared that the Council shall thereupon "apply and continue to apply" the same, as directed by the order. It is felt by the Legislature that the possession of an unproductive surplus is an element of abuse, and provision is made by this and the following sections for the investment or other disposal of it.

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Surplus may be invested in certain cases.

**268.** If any part of the produce of the special rate levied in respect of any debt and at the credit of the sinking fund account, or of the special rate account thereof, cannot be immediately applied towards paying the debt by reason of no part thereof being yet payable, (*t*) the Council shall, from time to time, invest in Government securities, or otherwise, as the Governor in Council may direct. (*u*) 29-30 V. c. 51, s. 232.

Council may apply other funds towards such debts.

**269.** Every such Council may appropriate to the payment of any debt the surplus income derived from any public or Corporation work, or from any share or interest therein, after paying the annual expenses thereof, or any unappropriated money in the Treasury, or any money raised by additional rate, (*v*) and any money so appropriated shall be carried to the credit of the sinking fund of the debt, or in payment of any instalment accruing due. (*w*) 29-30 V. c. 51, s. 233.

Certain moneys may be set apart for educational purposes.

Investment of same.

**270.** From and after the passing of this Act, any Municipal Corporation having surplus moneys derived from the Upper Canada Municipalities Fund, or from any other source, other than from any distribution of the provincial surplus, (*a*) may, by By-law, set such surplus apart for educational purposes, and invest the same, as well as any

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(*t*) See note *s* to sec. 267.

(*u*) The power conferred so far is simply to invest in Government securities. This, it is apprehended, may be made without any order in Council. But if an investment otherwise than in Government securities, or such securities hereinafter specially mentioned, it is presumed that an order in Council will be required.

(*v*) The rate for the payment of a debt created by By-law is calculated according to the existing value of the taxable property of the Municipality, irrespective of income from public works or other increase. (Sec. 248, sub. 4.) But by this section the Council of the Municipality is empowered to supplement the proceeds of the rate by the appropriation thereto of the following moneys:

1. The surplus income derived from any public or Corporation work, or from any share or interest therein, after paying the annual expenses thereof.

2. Any unappropriated money in the Treasury.

3. Any money raised by additional rate.

(*w*) See note *s* to sec. 267.

(*a*) The original of this section was, by the Act of 1866, restricted in its operation to the Upper Canada Municipalities Fund. It was, by the Act 31 Vic. cap. 30, s. 27, extended to moneys derived from other sources.

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other moneys held by such Municipal Corporation for, or by it lawfully appropriated to, educational purposes, in public securities of the Dominion, Municipal debentures, or in first mortgages on real estate, held and used for farming purposes, and being the first lien on such real estate, and from time to time, as such securities mature, may invest in other like securities, or in the securities already authorized by law, as may be directed by such By-law, (*b*) or by other By-laws passed for that purpose; Provided always, that any sum so invested shall not exceed two-thirds of the value of the real estate on which it is secured, according to the last revised and corrected Assessment Roll at the time it is so invested. (*c*) 29-30 V. c. 51, s. 272; 31 V. c. 30, s. 27; 32 V. c. 43, s. 21.

Proviso as to investment.

Loans to school trustees.

**271.** Any Municipal Corporation having surplus moneys set apart for educational purposes, may by By-law invest the same in a loan or loans to any Board or Boards of School Trustees within the limits of the Municipality, for such term or terms, and at such rate or rates of interest as may be agreed upon by and between the parties to such loan or loans respectively, and set forth in such By-law, (*e*) or may

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(*b*) The power is to set apart the surplus for educational purposes and to invest the same. The investments may be—

1. In public securities of the Dominion;

2. Municipal debentures;

3. First mortgages on real estate, held and used for farming purposes.

In the event of the mortgagor making default, the Municipal Corporation may, notwithstanding the provisions of the Statute of Mortmain, have a decree of foreclosure. (*Orford* v. *Bailey*, 12 Grant, 276.) There is probably no serious danger of Municipalities holding lands so acquired to any alarming extent. (*Ib.*) If it should become a serious evil, the Legislature can cure it at any time by compelling a sale of the lands so acquired. (*Ib.*)

(*c*) This proviso is directed against possible abuses, and intended to secure safety of investment. The direction that the sum invested is not to exceed two-thirds of the value of the real estate on which it is secured, according to the last revised and corrected Assessment Roll at the time the money is invested, is deserving of careful attention. Municipal Councillors are trustees for the ratepayers, and if they disregard the safeguard of this section, they are made civilly responsible to make good the loss. (See sec. 272.)

(*e*) It should be noted that the first part of this section only applies to a Corporation "having surplus moneys set apart for educational purposes." The first part is a copy of section 275 of the Act of 1866. Before section 275 of the Act of 1866, which was taken from sec. 4 of Stat. 27 Vic. cap. 17, each Township had power to grant to

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by By-law grant any portion of such moneys or other general funds by way of gift to aid poor School Sections within the Municipality. (*f*) 29-30 V. c. 51, s. 275.

Aid to poor school sections.

**272.** No member of any Municipal Corporation shall take part in or in any way be a party to the investment of any such moneys as are mentioned in this Act, by or on behalf of the Corporation of which he is a member, otherwise than as is authorized by this Act, or by the eleventh section of the Act respecting Clergy Reserves, or by any other law in that behalf made and provided; (*g*) and any such person so doing shall be held personally liable for any loss sustained by such Corporation. (*h*) *Vide* 29-30 V. c. 51, s. 277.

No member of corporation to be party to investment.

Liability for loss.

**273.** The Treasurer of every Municipality for which any sum of money has been raised on the credit of the Consolidated Municipal Loan Fund, shall, so long as any part of such sum, or of the interest thereon, remains unpaid by such

Municipalities indebted to municipal loan fund to make annual returns to Provincial Treasurer.

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the Trustees of any School Section, on their application, authority to borrow any sums of money necessary for specified purposes, in respect to School sites, School Houses and their appendages, or for the purpose or erection of a teacher's residence; and in that event was required to cause to be levied in each year upon the taxable property in the Section a sufficient sum for the payment of the interest on the sum so borrowed, and a sum sufficient to pay off the principal within ten years. (Con. Stat. U. C. cap. 64, s. 35.) By the section here annotated, the Municipal Corporation may not merely give authority to School Trustees to borrow, but itself lend money to the School Trustees within the limits of the Municipality, "for such term or terms and at such rate or rates of interest as may be agreed upon, &c., and set forth in such by-law." (See *In re Doherty and Toronto*, 25 U. C. Q. B. 409.)

(*f*) The latter part of this section is new. It is not, like the first part of the section, restricted to moneys set apart for educational purposes. The grant may be of such last mentioned moneys, "or *other* general funds," by way of gift to aid poor School Sections within the Municipality.

(*g*) The members of the Municipal Council are agents for the people whom they represent, with a limited authority in regard to the borrowing or lending of money, as well as other matters. They are also trustees for the people, and, being so, are not allowed to make a profit out of the trust fund, or deal with it otherwise than directed by the Legislature. (See sec. 327, and notes thereto.)

(*h*) The Act of 1866 also provided that a person offending against the section should be guilty of a misdemeanor. This portion of the section, for the reason that since Confederation crime and criminal law appertain exclusively to the Dominion Legislature, is here omitted. (See note *v* to sec. 304.)

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Municipality, transmit to the Treasurer of Ontario, on or before the fifteenth day of January in every year, (*i*) a return, certified on the oath of the Treasurer before some Justice of the Peace, containing the amount of taxable property in the Municipality according to the then last Assessment Roll or Rolls, a true account of all the debts and liabilities of the Municipality for every purpose, for the then last year; and such further information and particulars with regard to the liabilities and resources of the Municipality, as the Governor in Council may from time to time require, (*j*) under a penalty, in case of neglect or refusal to transmit the return, account, information or particulars, of one hundred dollars, to be recovered with costs as a debt due to the Crown. (*k*) 29-30 V. c. 51, s. 163.

Penalty for default.

Every council to make a yearly report of state of debts to Governor, &c.

**274.** Every Council shall, on or before the thirty-first day of January in each year, (*l*) under a penalty of twenty dollars, in case of default, to be paid to the Treasurer of Ontario, transmit to the Governor, through the Provincial Secretary, an account, in the form presented from time to time by the Governor in Council, of the several debts of the Corporation, as they stood on the thirty-first day of December preceding, (*m*) specifying in regard to every debt of which a balance remained due at that day:

What such report must show.

(1.) The original amount of the debt;

(2.) The date when it was contracted;

(3.) The days fixed for its payment;

(4.) The interest to be paid therefor;

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(*i*) See note *h* to sec. 189.

(*j*) It is, by Con. Stat. Can. cap. 83, s. 64, made the duty of the Treasurer of any Municipality in *arrear* for any sum of money under that Act or the Municipal Loan Fund Act, to certify to the Provincial Secretary, within one month after the time when the sum of money is payable, the total value of the assessable property, and the rate in the dollar in such Municipality, for the year preceding the default.

(*k*) In any action for the recovery of such a penalty, it is sufficient to prove by any one witness or other evidence, that such return, &c., ought to have been transmitted by the defendant as alleged on the part of the Crown; and the onus of proving that the same was so transmitted is to rest upon the defendant. (Con. Stat. Can. cap. 16, s. 31.)

(*l*) See note *h* to sec. 189.

(*m*) The design of this return is to inform the Executive Government yearly of the financial position of each Municipality.

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(5.) The rate provided for the redemption of the debt and interest;

(6.) The proceeds of such rate for the year ending on such thirty-first day of December;

(7.) The portion (if any) of the debt redeemed or paid during such year;

(8.) The amount of interest (if any) unpaid on such last mentioned day; and

(9.) The balance still due of the principal of the debt. 29-30 V. c. 51, ss. 159, 241 & 242.

DIVISION II.—COMMISSION OF INQUIRY INTO FINANCES.

*When granted. Sec. 275.*
*Expenses of. Sec. 276.*

**275.** In case one-third of the members of any Council, or thirty duly qualified electors of the Municipality, (*n*) petition for a Commission to issue under the Great Seal, to inquire into the financial affairs of the Corporation and things connected therewith, (*o*) and if sufficient cause be shown, the Governor in Council may issue a commission accordingly; and the Commissioner or the Commissioners, or such one or more of them as the Commission empowers to act, shall have the same power to summon witnesses, enforce their

When a commission of inquiry may issue.

(*n*) The Act of 1866 only provided for the issue of the Commission on the petition of one-third of the members of the Council. But as cases might arise in which the whole Council were equally to blame and equally opposed to inquiry, it was deemed right to provide for the issue of the Commission on petition of thirty duly qualified electors of the Municipality. (34 Vic. cap. 30, s. 15.)

(*o*) The power conferred is one of inquiry, and may be of great advantage to Municipalities, by enabling the Commissioners to enforce the attendance of witnesses and compel them to give evidence. (*Per* Richards, C. J., *In re Eldon and Ferguson*, 6 U. C. L. J. 209.) It is a public inquiry conducted under a public Act of Parliament, which says nothing about compensation of witnesses, and it would seem that persons called before the Commissioners are not entitled to compensation for expenses or loss of time any more than in the case of a prosecution for a misdemeanor. (*Per* Robinson, C. J., in *East Nissouri* v. *Horsman et al*, 16 U. C. Q. B. 567.) Inquiries into other than financial matters are authorized by another section of this Act (sec. 370). If it be alleged and proved that the Councillors whose duty it is to give all necessary and reasonable information, maliciously conspired to withhold information, and contrived and intended to cause expense and damage to the Corporation, by increasing the costs and expenses of the Commission, and throw upon the Corporation any

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attendance, and compel them to produce documents and to give evidence, as any Court has in civil cases. (*oo*) 29-30 V. c. 51, s. 243; 34 V. c. 30, s. 15.

Expenses of such commissions provided for.

**276.** The expenses to be allowed for executing the Commission shall be determined and certified by the Treasurer of Ontario, and shall thenceforth become a debt due to the Commissioner or Commissioners by the Corporation, and shall be payable within three months after demand thereof made by the Commissioner, or by any one of the Commissioners, at the office of the Treasurer of the Corporation. (*p*) 29-30 V. c. 51, s. 244.

## TITLE IV.—ARBITRATIONS.

DIVISION I.—APPOINTMENT OF ARBITRATORS.
DIVISION II.—PROCEDURE.

### DIVISION I.—APPOINTMENT OF ARBITRATORS.

*How appointed. Sec. 277–281.*
*Failure of parties to appoint. Sec. 282.*
*Respecting Roads, Drains, &c. Sec. 283, 284.*
*Where several interests. Sec. 285, 286.*
*Award, when to be made. Sec. 287.*
*Certain persons disqualified. Sec. 288.*

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costs (sec. 276), and it be charged and proved that the Councillors, in pursuance of such contrivance and intention, misconducted themselves to the damage of the Corporation, an action on the case may be maintained against them at the suit of the Corporation for the recovery of damages (*Ib.*); and in such an action, where it was shown that the Clerk absented himself and kept back the books, &c., in collusion with the defendants, and that, in consequence, the costs of the Commission, which otherwise would not have exceeded £75 or £100, were increased to £328, it was held that the sum of £250 damages was not excessive. (*East Nissouri* v. *Horsman et al*, 18 U. C. Q. B. 31.) There is nothing in the section to prevent the Corporation from suing for money due them. (*Per* Richards, J., *In re Eldon and Ferguson et al*, 6 U. C. L. J. 209.) It would be unreasonable to hold that the power to inquire should deprive the Corporation of the right to resort to a more speedy and economical mode of investigating accounts, and of obtaining payment of the amount due when ascertained. (*Ib.*)

(*oo*) It is presumed that witnesses on such an inquiry would not be bound by their answers to questions to criminate themselves. (See note *t* to sec. 370.)

(*p*) The expenses are to be *determined* by the Treasurer of Ontario. No appeal of any kind is provided for. When determined, the account may be certified. When certified, the amount of it becomes a debt due by the Municipality to the Commissioner or Commissioners, payable "*within* three calendar months after demand, &c." A right of action arises on the part of the Commissioners to recover the money by action at law, after the amount has been determined,

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**277.** The appointment of all Arbitrators shall be in writing under the hands of the appointors, (*a*) or, in case of a Corporation, under the Corporate Seal, and authenticated in like manner as a By-law. (*b*) 29-30 V. c. 51, s. 353, sub. 8. Appointments, how to be made.

**278.** The Arbitrators on behalf of a Municipal Corporation shall be appointed by the Council thereof, or by the head thereof, if authorized by a By-law of the Council. (*c*) 29-30 V. c. 51, s. 353, sub. 9. Council or head thereof may appoint for corporation.

**279.** In cases where arbitration is directed by this Act, either party may appoint one Arbitrator, and give notice thereof in writing to the other party, and therein calling upon such party to appoint an Arbitrator on behalf of the party to whom such notice is given; (*d*) a notice to the Mode of appointing arbitrators and conducting arbitrations.

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certified and demanded. The amount being payable within three months after demand thereof, &c., the Commissioners are not obliged to wait for payment till the amount has been raised by rate or other contingency. (See *Frontenac* v. *Kingston*, 30 U. C. Q. B. 584.)

(*a*) Decided cases show the great practical difficulty which either party may often have in obtaining possession of the appointment of his opponent's Arbitrator when he wishes to make the submission a rule of Court, and the delay, expense and inconvenience to which this difficulty may subject him. A method, it is suggested, may be found to remedy this difficulty. If each party took the precaution, at the time of the reference, of requesting the other party to make the appointment of his Arbitrator in duplicate, and if they mutually agree to furnish each other with one of the duplicate parts, and not a mere copy, there seems no reason why, on producing the appointment of his own Arbitrator and the duplicate original of his opponent's Arbitrator, and properly verifying both of them, the submission might not be made a rule of Court. (Russell on Awards, 2nd Ed. 560.)

(*b*) There should, in strictness, be a By-law of the Council authorizing the appointment, or the affixing of the seal to the appointment, or a By-law delegating the appointment to the head of the Council. (See sec. 278.) But the Municipal Council may so act as to be estopped from taking formal objections to the mode of appointment. (See *In re Eldon and Ferguson*, 6 U. C. L. J. 207; and *Wilson and Port Hope*, 10 U. C. Q. B. 405.) The appointment, when properly authorized, should not only be under the seal of the Corporation, but be signed by the head of the Corporation and by the Clerk of the Corporation. Such is the mode of authenticating a By-law. (See secc. 226.)

(*c*) As a rule, an Arbitrator, to represent a Municipal Council, must be appointed by that Council; the exception is when the Council, by By-law, deputes that power to the head of the Council. (See note *b* to preceding section.)

(*d*) The notice must be in writing. It should state the object of the arbitration, name the Arbitrator appointed by the party giving

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Corporation shall be given to the Head of the Corporation. (*e*) *Vide* 29-30 V. c. 51, s. 353, sub. 1.

Third arbitrator to be appointed.

**280.** The two Arbitrators appointed by or for the parties shall within seven days (*ee*) from the appointment of the lastly named of the two Arbitrators choose a third Arbitrator. (*f*) 33 V. c. 26, s. 13.

When more than two municipalities.

**281.** In cases where more than two Municipalities are interested, each of them shall appoint an Arbitrator; and in such case, if there be an equality of Arbitrators, the Arbitrators so appointed shall appoint another Arbitrator; (*g*) or in default, at the expiration of twenty-one days after such Arbitrators have been appointed, the Lieutenant-Governor

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the notice, and call upon the other party to name his Arbitrator. It should be express and absolute. Where B. had given notice to a railway company that "it was his intention" to appoint M. as Arbitrator, and if they failed for fourteen days to appoint one, he would appoint him to act for both parties, and M. did so act, the Court refused to enforce the award. (*Bradley* v. *London & North Western Railway Co.* 5 Ex. 769.)

(*e*) This is apparently a provision for the service of the notice. "It shall be given to the head of the Corporation."

(*ee*) As to computation of time, see note *a* to sec. 128.

(*f*) By the word "choose" is apparently meant "appoint." The word is not a very definite one as here used. Besides, no mode of appointment of the third Arbitrator is prescribed. There being no special mode declared for the appointment of the third Arbitrator, an appointment by word of mouth might be held sufficient. (See *Oliver* v. *Collings*, 11 East. 367.) But it would be more convenient in all cases to have the appointment in writing. It is a common error to look upon a *third* Arbitrator as an umpire. The difference between a third Arbitrator and an umpire is that the former is appointed *before* the arbitration proceeds, and the latter after the Arbitrators have entered upon the reference and are unable to agree. There are other distinctions between the two, unnecessary to be mentioned here. (Harrison's C. L. P. Act, 2nd Ed. 238.)

(*g*) This section contemplates the difficulty of Arbitrators disagreeing where each represents a particular Municipality, and there is an equality of Arbitrators. In such a case there ought to be no difficulty. But Arbitrators sometimes, instead of appreciating their position as impartial judges of the matters in dispute, and so acting, act as advocates, if not as partizans for the party appointing them. No decision would generally be the result if there were no provision for the appointment of an additional Arbitrator. The additional Arbitrator, under this section, is to be appointed by the Arbitrators first appointed. If they, from any cause, fail to do so, the Lieutenant-Governor may, on a proper application, appoint such additional Arbitrator. Although no direction is given as to the mode of appointment in either case, it would be well that it should be made in writing. (See note *f* to sec. 280.)

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in Council may, on the application of any one of the Municipalities interested, appoint such Arbitrator. 33 V. c. 26, s. 13.

Provision in case of neglect to appoint.

**282.** In case of an arbitration between Municipal Corporations, if for twenty-one days, or in case the arbitration is respecting drainage works, then, if for twenty days after having received such notice, the party notified omits appointing an Arbitrator; (*h*) or if for seven days after the second Arbitrator has been appointed, the two Arbitrators omit to appoint a third Arbitrator, then, in case the arbitration is between Townships or between a Township and a Town or an Incorporated Village, the Judge of the County Court of the County within which the Townships, Town or Incorporated Village are or any of them is situate, or in case the arbitration is between other Municipalities, the Governor in Council may appoint an Arbitrator for the party or Arbitrators in default, or a third Arbitrator, as the case may require. *Vide* 29-30 V. c. 51, s. 353, sub. 3; 35 V. c. 26, ss. 11 & 12.

Arbitration as to roads, drains, &c.

**283.** In case of an arbitration between a Municipal Corporation and the owners of property to be entered upon, taken or used in the exercise of the powers of the Corporation in regard to roads, streets, or other communications, or to drains and sewers, (*i*) if, after the passing of the By-law, any person interested in the property appoints and gives due notice to the head of the Council of his appointment of an Arbitrator to determine the compensation to which such person is entitled, (*j*) the head of the Council shall, if autho-

(*h*) It is the duty of each party to appoint *one* Arbitrator, and give notice thereof in writing to the other party. It is the duty of the two Arbitrators so appointed, in seven days after the appointment of the second Arbitrator, to appoint a third Arbitrator. Default may be made in either particular, and provision is here made therefor. If the arbitration is between Townships, or between a Township and Town, or Incorporated Village, the Judge of the County in which the Townships, Town or Incorporated Village are or any of them is situate, may appoint the second or third Arbitrator, as the case may require; but if the arbitration is between other Municipalities, such as Counties or County and a City or Town, or a City and Town, the appointment must be made by the Governor in Council. The appointment ought, though not so directed, to be in writing. (See note *d* to sec. 279, and note *f* to sec. 280.)

(*i*) The husband cannot bind his wife as to her property so as to avoid the necessity of an arbitration with her. (See *In re Benson et ux. and Port Hope, Lindsay & Beaverton Railway Co.* 29 U. C. Q. B. 529.)

(*j*) A difference is to be observed as to arbitration between Municipal Corporations and arbitrations between a Municipal Corporation



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rized by By-law, (*k*) within seven days, (*l*) appoint a second Arbitrator, and give notice thereof to the other party, and shall express clearly in the notice what powers the Council intends to exercise with respect to the property, describing it. (*ll*) *Vide* 29-30 V. c. 51, s. 353, sub. 4.

Provision if owner of property fails to name arbitrator.

**284.** In any such last mentioned arbitration, if, after service on the owner or owners of the property of a copy of any By-law, certified to be a true copy under the hand of the Clerk of the Council, the owner or owners omit for twenty-one days naming an Arbitrator, and giving notice thereof as aforesaid, (*m*) the Council or the head, if authorized by By-law, (*n*) may name an Arbitrator on behalf of the Council, and give notice thereof to the owner or owners of the property, and the latter shall, within seven days thereafter, name an Arbitrator on his or their behalf. *Vide* 29-30 V. c. 51, s. 353, sub. 5.

Where several parties are interested in the same property.

**285.** In case there are several persons having distinct interests in property in respect of which the Corporation is desirous of exercising the powers referred to in the two hundred and eighty-third section, under a By-law in that behalf passed, whether such persons are all interested in the

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and individuals. In the latter case the individual appoints his Arbitrator, and gives due notice thereof to the head of the Council. When he does so, the head of the Council is required, if authorized by By-law, within seven days, to appoint a second Arbitrator, and, besides, to give notice thereof to the individual; in which notice must be clearly expressed "what powers the Council intend to exercise with respect to the property, describing it." For *form* of mandamus on the head of a Municipal Council to appoint an Arbitrator, see *The Queen* v. *Perth*, 14 U. C. Q. B. 156.

(*k*) See note *c* to sec. 278.

(*l*) As to computation of time, see note *a* to sec. 128.

(*ll*) See note *a* to sec. 373.

(*m*) The first step is to be taken by the Council, who are required to cause to be served on the owner of the land to be affected a copy of the By-law affecting it, certified to be a true copy, under the hand of the Clerk of the Council. Then the initiative as to arbitration is to be taken by the owner so served. It is his duty, within twenty-one days after service, to name an Arbitrator and give notice thereof to the Council in the manner prescribed by the last clause. If he allow the twenty-one days to expire without doing it, then the Council may take the initiative by appointing the first Arbitrator, and giving notice of his appointment. If this is done the owner of the land is required, within *seven* days thereafter, to name the second Arbitrator. As to computation of time, see note *a* to sec. 128.

(*n*) See note *c* to sec. 278.

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same piece of property, or some or one in a part thereof and some or one in another part thereof, and in case the By-law or any subsequent By-law provides that the claims of all should, in the opinion of the Council, be disposed of by one award, (*o*) such persons shall have twenty-one (instead of seven) days to agree upon and give notice of an Arbitrator jointly appointed in their behalf, (*p*) before the County Court Judge shall have power to name an Arbitrator for them. *Vide* 29-30 V. c. 51, s. 353, sub. 10.

County Court judge to appoint arbitrator in certain cases

**286.** If any such owner or occupier, or the head of any such Council, whether from want of authority in that behalf or otherwise, (*q*) omit naming an Arbitrator within seven days after receiving notice to do so, (*r*) or if the persons having distinct interests as aforesaid, (*s*) omit naming an Arbitrator within twenty-one days after receiving notice to do so, or if the two Arbitrators do not within seven days from the appointment of the lastly named of the two Arbitrators, agree on a third Arbitrator within seven days after the lastly named Arbitrator's appointment, (*t*) or if any of said Arbitrators refuse or neglect to act, (*u*) the Judge of the County Court of the County in which the property is situated, on the application of either party, shall nominate as an Arbitrator a fit person resident without the limits of the Municipality in which the property in question is situate, to act for the party failing to appoint or as such third Arbitrator, or in the stead of the Arbitrator refusing or neglecting to act, (*v*) and such Arbitrators shall forthwith

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(*o*) Where several persons are interested (as in the opening of a new road, &c.), there may be an arbitration under this Act as to each person interested, or, in the option of the Council, an arbitration as to all, and the claims of all be determined by one award. In the latter case, instead of seven days only allowed by subsection 7, twenty-one days are given.

(*p*) See note *d* to sec. 279.

(*q*) See note *c* to sec. 278.

(*r*) As to computation of time, see note *a* to sec. 128.

(*s*) See sec. 285.

(*t*) As to computation of time, see note *a* to sec. 128.

(*u*) "*Any* of the Arbitrators." This may be taken to refer to the refusal or neglect of any Arbitrator mentioned in any of the preceding sections, from section 277, to act, for in none of them is there any such provision made for the neglect or refusal of an Arbitrator to act.

(*v*) Though not so directed, it would be convenient that the nomination should be in writing. (See note *f* to sec. 280.)

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proceed to hear and determine the matters referred to them. *Vide* 29-30 V. c. 51, s. 353, sub. 7.

Time for making award.

**287.** In any of the cases herein provided for, (*a*) the Arbitrators shall make their award within one month after the appointment of the third Arbitrator. (*b*) *Vide* 29-30 V. c. 51, s. 353, sub. 6.

Persons disqualified from acting as arbitrators.

**288.** No member, officer, or person in the employment of any Corporation which is concerned or interested in any arbitration, (*c*) nor any person so interested shall be appointed or act as an Arbitrator in any case of arbitration under this Act. *Vide* 32 V. c. 43, s. 12; 35 V. c. 26, s. 11.

DIVISION II.—PROCEDURE.

*Oath of Arbitrator. Sec. 289.*
*Proceedings. Sec. 290.*
*Costs, power over. Sec. 291.*
*Majority to Decide. Sec. 292.*
*Evidence, where filed. Sec. 293.*
*Award, when adoption by By-law required. Sec. 294.*
*Award, how made, and Jurisdiction of Courts. Sec. 295.*

Arbitrators to be sworn.

**289.** Every Arbitrator, before proceeding to try the matter of the arbitration, shall take and subscribe the following oath (*d*) (or in case of those who by law affirm,

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(*a*) See sec. 277, *et seq.*

(*b*) From the time the Arbitrator has made the award his authority ceases. He cannot afterwards make any correction or alteration, even of manifest errors. (*Irvine* v. *Elnon*, 8 East. 54; *Ward* v. *Dean*, 3 B. & Ad. 234; *Re Hall* v. *Hinds*, 2 M. & G. 847; *Brooke* v. *Mitchell*, 6 M. & W. 473.)

(*c*) An Arbitrator should be impartial. If corrupt conduct on the part of an Arbitrator be shown his award will be set aside. (See *Tittenson* v. *Peat*, 3 Atk. 529; *Earle* v. *Stocker*, 2 Vern. 251; *Burton* v. *Knight*, *Ib.* 514; *Morgan* v. *Mather*, 2 Ves. 15; *Emery* v. *Wase*, 5 Ves. 846; *Lonsdale* v. *Littledale*, 2 Ves. 451; *Clarke* v. *Stocken*, 2 Bing. (N. C.) 651.) But mere suspicion of misconduct is not enough. (*Crossley* v. *Clay*, 5 C. B. 581: see also *Anon*, 2 Vern. 100; *Goodman* v. *Sayers*, 2 J. & W. 249.) In order that there should not be even suspicion as to Municipal awards, it is here declared that "no member, officer, or person in the employment of any Corporation which is concerned or interested in any arbitration, nor any person so interested shall be appointed to act as an Arbitrator." (See *In re Elliot and South Devon Railway Co.* 2 De G. & Sm. 17.)

(*d*) The oath is not only to be taken by *every* Arbitrator, but to be taken by him "*before proceeding to try the matter of the arbitration.*" The oath, besides, is not only to be taken but subscribed.

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make and subscribe the following affirmation) before any Justice of the Peace:

I, *A. B.*, do swear (or affirm) that I will well and truly try the matters referred to me by the parties, and a true and impartial award make in the premises according to the evidence and my skill and knowledge. So help me God. *Vide* 29-30 V. c. 51, s. 353, sub. 11; 35 V. c. 26, s. 13. Form of oath.

**290.** The Arbitrators shall, within twenty days after the appointment of the third Arbitrator, (*e*) meet at such place as they may agree upon, (*f*) to hear and determine the matter in dispute, (*g*) with power to adjourn from time to time, and shall make their award in writing, (*h*) and if it be respecting drainage works, in triplicate, which shall be binding on all parties, and one copy thereof shall be filed with the Clerk of each of the Municipalities interested, and one shall, in case it be respecting drainage works as aforesaid, be filed with the Registrar of Deeds for the County in which the lands affected are situate. (*i*) *Vide* 35 V. c. 26, s. 14. Time of meeting.

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When taken and subscribed, it is to be filed with the papers of the reference.

(*e*) As to computation of time, see note *a* to sec. 128.

(*f*) There is no express direction in this statute that the Arbitrators shall give to the parties notice of their meetings and an opportunity of being heard; but this is essential, at least to this extent, that whether there has been a formal notice or not, it should appear that the parties at least had knowledge of the meetings and an opportunity of being heard and producing evidence before the Arbitrators. (*In re Johnson and Gloucester*, 12 U. C. Q. B. 135.)

(*g*) An Arbitrator is in general, whether of the legal profession or not, the judge of law as well as fact (see *Jupp et al* v. *Grayson*, 1 C. M. & R. 523; *Young* v. *Walter*, 9 Ves. 364, *Perriman* v. *Steggall*, 9 Bing. 679; *Campbell* v. *Twemlow*, 1 Price, 81; *Wilson* v. *King*, 2 C. & M. 689; *Hall* v. *Ferguson*, 4 O. S. 392), and this being so, the Court will be reluctant to set aside the award unless for mistake apparent on the face of it (*Hogge* v. *Burgess*, 3 H. & N. 293; *Hodgkinson* v. *Fernie*, 3 C. B. N. S. 189; *Baguelly* v. *Borthwith*, 4 L. T. N. S. 245), and, unless empowered to set it aside, will not in general remit it back to the Arbitrator for reconsideration. (*Hogge* v. *Burgess*, 3 H. & N. 293; *Latta* v. *Wallbridge*, 7 U. C. L. J. 207.) But as to certain awards, inquiry may be had as to the merits. (See secs. 294 & 295.)

(*h*) In all cases the award is to be in writing. If it were not for this very proper provision, an award by word of mouth might be held sufficient. (*Hanson* v. *Leveredge*, Carthew, 256; *Rawling* v. *Wood*, Barnes, 54; *Oates* v. *Bromil*, 1 Salk. 75; *Blundell* v. *Brettargh*, 17 Ves. 232, 240.)

(*i*) The original, in all probability, would be received as evidence on its mere production, and if so, a copy thereof may be received

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Costs.

**291.** The Arbitrators shall have power to award the payment by any of the parties to the other of the costs of the arbitration, or of any portion thereof, (*k*) and may either direct the payment of a fixed sum, (*l*) or that such costs should be taxed on either the scale of Superior Courts of Common Law, or of the County Courts, in which case such costs shall be taxed by the officer in the County of the proper Court, without any further order, (*m*) and the amount shall be payable one week after such taxation. (*n*) Revision by the principal officer at Toronto may be had upon one week's notice, and an appeal to a Judge in the usual manner. (*o*) *New.*

Majority to decide.

**292.** In case of a difference between the Arbitrators, the decision of the majority of them shall be conclusive. (*p*) 33 V. c. 26, s. 13; 35 V. c. 26, s. 15.

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without proof of the original. (See *Warren* v. *Deslippes*, 33 U. C. Q. B. 59.)

(*k*) Power is given to the Arbitrators to award as to costs; but they are under no obligation to do so. They may, if they see fit, be silent as to costs. (See *Mackintosh* v. *Blythe*, 1 Bing. 269; *Young* v. *Gye*, 10 Moore, 198.) Before this Act there was no power to award as to costs. (*In re Northumberland* v. *Durham and Cobourg*, 20 U. C. Q. B. 283.)

(*l*) The Court will not review the discretion as to amount where an Arbitrator having power to fix the amount of costs has exercised the power, unless the amount fixed be so excessive as to manifest partiality. (Anon. 1 Chit. 38; *Shephard* v. *Brand*, Cases Temp. Hard. 53; *Turner* v. *Rose*, 1 Ld. Kenyon, 393.)

(*m*) All that the Arbitrator has to do, instead of fixing the amount of costs, is to say, "I award costs to (naming the party)," according to the scale of costs of the Superior Courts of Common Law or of the County Court, and stating whether he intends his award to apply to all the costs, including the award as well as the reference. In such case the costs must be taxed by the officer of the proper Court without an order of any kind.

(*n*) If the costs be either fixed in the award or be declared subject to taxation on the scale either of Superior Courts or County Courts, the amount, when ascertained, may be enforced in the same manner as any other portion of the award.

(*o*) Either party may, as of right, have the taxation of costs by any Deputy Clerk of the Crown and Pleas revised by the principal Clerk of the Court wherein the proceedings have been had. (C. L. P. Act, s. 331; Har. C. L. P. Act, 2nd Ed. 438.)

(*p*) In the case of an award by several individuals, all should execute at the same time and in the presence of each other (*In re Templeman and Reed*, 9 Dowl. 965; *Wade* v. *Dowling*, 4 E. & B. 43; *Helps* v. *Roblin*, 6 U. C. C. P. 52; *Martin* v. *Kergan*, 2 Prac. R.

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Notes of the evidence adduced to be taken and filed in certain cases.

**293.** In the case of any award under this Act which does not require adoption by the Council, (*q*) or in case of any award to which a Municipal Corporation is a party, and which is to be made in pursuance of a submission containing an agreement that this section of this Act should apply thereto, (*r*) the Arbitrator or Arbitrators shall take, and immediately after the making of the award, shall file with the Clerk of the Council, for the inspection of all parties interested, full notes of the oral evidence given on the reference, and also all documentary evidence or a copy thereof; and in case they proceed partly on a view or any knowledge or skill possessed by themselves or by any of them, they shall also put in writing a statement thereof sufficiently full to allow the Court to form a judgment of the weight which should be attached thereto. (*s*) 29-30 V. c. 51, s. 353, sub. 13.

Grounds of decision, &c. to be stated in writing.

Award to be binding in certain cases, must be adopted by by-law within a certain time.

**294.** In case the award relates to property to be entered upon, taken or used as mentioned in the two hundred and eighty-third section, and in case the By-law did not authorize or profess to authorize any entry or use to be made of the property before an award has been made, except for the purpose of survey, or in case the By-law did give or profess to give such authority, but the Arbitrators find that such authority had not been acted upon, the award shall not be binding on the Corporation unless it is adopted by By-law

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370), and full opportunity should be given to the minority of the Arbitrators, if so disposed, to join in the award. (*Ib.*)

(*q*) See sec. 294 and notes thereto.

(*r*) Which may be in this form: "It is hereby agreed that section 293 of the Act respecting Municipal Institutions in the Province of Ontario shall apply to any award made touching or concerning the premises aforesaid."

(*s*) The duties of the Arbitrators, where this section applies, are to—

1. Take full notes of the oral evidence given on the reference.

2. File the same, immediately after the making of the award, with the Clerk of the Council, for the inspection of all parties interested.

3. File in like manner all documentary evidence, or a copy thereof.

4. In case they proceed partly on a view or any knowledge or skill possessed by themselves or by any of them, put in writing a statement thereof sufficiently full to allow the Court to form a judgment of the weight which should be attached thereto.

But it does not follow that the award will be set aside for non-compliance with the provisions of this section. (*In re Northumberland and Durham and Cobourg*, 20 U. C. Q. B. 283.)

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within six weeks after the making of the award; (*t*) and if the same is not so adopted, the original By-law shall be deemed to be repealed, and the property shall stand as if no such By-law had been made, and the Corporation shall pay the costs of the arbitration. 29-30 V. c. 51, s. 353, sub. 12.

Award to be made by at least two arbitrators, and subject to Superior Courts.

Powers of the courts in such matters.

**295.** Every award made under this Act shall be in writing (*tt*) under the hands of all or two of the Arbitrators, and shall be subject to the jurisdiction of any of the Superior Courts of Law or Equity as if made on a submission by a bond containing an agreement for making the submission a rule or order of such Court; (*u*) and in the cases provided for by the two hundred and ninety-third section, the Court

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(*t*) A Municipal Corporation has, by statute, certain powers in regard to roads, streets and other communications, and to drains and sewers, which powers may be exercised by By-law. Any award made in reference thereto is dependent on the adoption of the award by By-law within six weeks after its making; and the original By-law is also made dependent on the passing of such second By-law. The award is not to be binding on the Corporation unless, within the time limited for the purpose, it is adopted by the Council. If not so adopted, the original By-law is to be deemed repealed. In this event the Corporation is to pay the costs of the arbitration. (As to which see sec. 291 and notes thereto.)

(*tt*) See note *h* to sec. 290.

(*u*) Formerly there were two kinds of submission that might be made rules of Court:

1. References by rule of Court, Judge's order, and order of Nisi Prius.

2. Submissions in writing, by virtue of the statute 9 & 10 Wm. III. cap. 15, where they contain an agreement to the effect that they may be made rules of Court.

These were extended by the Common Law Procedure Act, 1856, s. 97, which enacted that "Every agreement or submission, whether by deed or instrument, not under seal, may be made a rule of one of the Superior Courts of Law or Equity in Upper Canada, on the application of any party thereto, unless such agreement or submission contain words purporting that the parties intend that it should *not* be made a rule of Court," &c. This provision is now in substance re-enacted in sec. 176 of Con. Stat. U. C. cap. 22, C. L. P. Act. The effect of the clause here annotated is to place submissions under this section on the same footing as any of the foregoing described submissions. (*In re Brant and Waterloo*, 19 U. C. Q. B. 450; and *In re Eldon and Ferguson*, 6 U. C. L. J. 207.) The effect of making any award under this Act subject to the jurisdiction of any of the Superior Courts of Law or Equity, as if made on a submission by a bond containing an agreement for making the submission a rule or order of such Court, appears to be to bring all such submissions under the statute of 9 & 10 Wm. III. cap. 15, and to give the Courts power to review the awards, and, if necessary, to enforce the performance

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shall consider not only the legality of the award but the merits as they appear from the proceedings so filed as aforesaid, and may call for additional evidence to be taken in any manner the Court directs, and may, either without taking such evidence or after taking such evidence, set aside the award or remit the matters referred, or any of them, from time to time, to the consideration and determination of the same Arbitrators, or to any other person or persons whom the Court may appoint as prescribed in the "Common Law Procedure Act," and fix the time within which such further or new award shall be made, (*v*) or the Court may itself increase or diminish the amount awarded or otherwise modify the award, as the justice of the case may seem to the Court to require. (*w*) 29-30 V. c. 51, s. 353, sub. 14.

## TITLE V.—DEBENTURES AND OTHER INSTRUMENTS.

*Under Seal and by Signature of Head. Sec. 296.*
*Railway Debentures. Sec. 297..*
*Defects in Form. Sec. 298.*
*Local Improvement Debentures. Sec. 299.*
*Registered Debentures. Sec. 300–303.*
*No issue under $100. Sec. 304.*

Debentures, bonds, &c., how to be executed.

**296.** All debentures and other instruments duly authorized to be executed on behalf of a Municipal Corporation shall, unless otherwise specially authorized or provided, be sealed with the seal of the Corporation, and be signed by the head thereof, or by some other person authorized by By-law to sign the same, (*a*) otherwise the

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of them. (See notes to Harrison's C. L. P. Act, 2nd Ed. 223.) The ordinary remedy by action is of course open to any party to an award under this section. (See *Harpel* v. *Portland*, 17 U. C. Q. B. 455.) In such an action it is no objection to the declaration that it was upon a submission to three Arbitrators, while two only executed the award, for the statute authorizes two to act, and makes their award valid. (*Ib.*) Under a plea of no award it has been held that defendants cannot dispute the Arbitrators' authority to award a portion of the sum awarded. (*Hodgson* v. *Whitby*, 17 U. C. Q. B. 230.)

(*v*) This is contrary to the ordinary rule. (See note *g* to sec. 290.)

(*w*) The power here given can be reasonably exercised on inspection of "the full notes of the oral evidence given in the reference, and also all documentary evidence or a copy thereof," which, under sec. 293 of the Act, the Arbitrators are bound to file "for the inspection of all parties interested."

(*a*) Although the By-law provides that the debentures shall be signed by the head of the Council, yet, if the head of the Council

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same shall not be valid, (*b*) and it shall be the duty of the Treasurer of the Municipality to see that the money collected under such By-law is properly applied to the payment of the interest and principal of such debentures. (*c*) 29-30 V. c. 51, s. 213.

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perversely refuse to discharge his duty in this respect, a By-law may be passed providing for the signing of the debentures by some person in his stead, and the debentures so signed will be valid. (*Brock* v. *Toronto & Nipissing Railway Co.*, 17 Grant, 425.)

(*b*) It has been held that a debenture issued by a Municipal Council, under its corporate seal, and signed by the head of the Corporation, for the payment of a debt due or loan contracted under a By-law which does not provide by special rate for the payment of the debt or loan, does not estop the Municipal Corporation from setting up, as a defence to an action on the debentures, the invalidity of the By-law (*Mellish* v. *Brantford*, 2 U. C. C. P. 35; see further, *Thomas* v. *Richmond*, 12 Wall. 349; *Webster County* v. *Taylor*, 19 Iowa, 117; *Clark* v. *Desmoines*, *Ib.* 199; *Clark* v. *Polk County*, *Ib.* 248; *Halstead* v. *Mayor*, *&c.* 3 Comst. (N. Y.) 430; *Hodges* v. *Buffalo*, 2 Denio. 110; *Boom* v. *Utica*, 2 Barb. 104; *Anthony* v. *Inhabitants*, 1 Metc. 284), and may file a bill in Equity for the cancellation of securities illegally issued. (*Pulaski County* v. *Lincoln*, 4 Eng. (Ark.) 320; *Trustees*, *&c.* v. *Cherry*, 8 Ohio St. 564. See further, note *m* to sec. 300.) A person negotiating the sale of a Municipal debenture is not answerable that the Municipality will pay the amount secured by the debenture. (*Sceally* v. *McCallum*, 9 Grant, 434.) Where, therefore, a Township Municipality, in pursuance of the Municipal Corporation Act of 1849, passed a By-law for the purpose of granting a loan to the Port Burwell Harbour Company, and issued debentures thereunder which were subsequently declared to be illegal in consequence of the road company not having been properly constituted, the Court of Chancery, in the absence of any proof of fraud, refused to order one of the directors of the road company to refund the amount paid to him upon the sale of one of such debentures. (*Ib.*) (See further, note *m* to sec. 300.)

(*c*) The latter part of this section, like section 255, is intended for the protection of creditors. The duty of the Treasurer to see that the money collected under the By-law is properly applied is made imperative, and no subsequent By-law or resolution of the Council would in law be any excuse for the neglect of that duty. If the By-law authorize the loan for a special purpose only, the Treasurer could not, without disregarding his plain duty, apply the money to any other purpose. (*Grier* v. *Plunket*, 15 Grant, 152.) But where the misapplication had been actually made before the filing of a bill by a ratepayer complaining of the misapplication, and the same had been made in good faith in discharge of a legal liability of the Municipality, and the Council of the Township approved of and adopted the payment, a bill by a ratepayer to compel the Treasurer to repay the amount and personally bear the loss, was dismissed. (*Ib.*)

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**297.** Any debenture issued in aid of any railway, or for any bonus, (*e*) signed or endorsed and countersigned as directed by the By-law, shall be valid and binding on the Corporation without the corporate seal thereto, or the observance of any other form with regard to the debenture than such as may be directed in the By-law. (*f*) 29-30 V. c. 51, s. 350. In certain cases, debentures valid without corporate seal, &c.

**298.** Any debentures issued under the authority of any By-law which has been promulgated under this Act, (*g*) shall be valid and binding upon the Corporation, notwithstanding any insufficiency in form or otherwise of such By-law, or in the authority of the Corporation in respect thereof; (*h*) Provided that the said By-law is in accordance with sub-sections one to five, both inclusive, of section two hundred and forty-seven, or in accordance with section two hundred and fifty, (*i*) and has received the assent of the electors where necessary, and that no successful application has been Debentures valid notwithstanding defect in form. Proviso.

(*e*) See sec. 471 and notes thereto.

(*f*) This is an exception to the general rule, which requires debentures of a Municipal Corporation to be sealed with the seal of the Corporation and signed by the head thereof. (Sec. 296.) Why such an exception should be either created or preserved, it is difficult to understand; but so the law is written. The effect of the section is, as regards debentures in aid of any railway or for any bonus, that they may be in such form as the By-law directs, and shall be valid notwithstanding the want of the corporate seal thereto.

(*g*) See sec. 237.

(*h*) Were it possible to secure for all money By-laws the stamp of legality, so as to remove all suspicion of informality, irregularity or illegality, the effect would be eminently beneficial. It would beget a spirit of confidence alike of advantage to the seller and to the buyer of Municipal debentures. Less room would be left for speculation or trade on the fears of men and contingencies of law, and more stability be imparted to the negotiation of Canadian Municipal securities; one consequence of which—and not the least—would be the increase of the market value of the securities. A mode likely to attain an end so desirable was suggested by the Editor in his preface to the first edition of this work. It was, to require all money By-laws to be approved by some competent public functionary, and when so approved that the debentures should not be liable to be impeached on the ground of informality, or want of technical accuracy, or otherwise.

(*i*) It is believed that section 248 and section 251 are here intended. The debentures are only made binding on the Corporation when these provisions of the sections are complied with. (See *Trust and Loan Company* v. *Hamilton*, 7 U. C. C. P. 103; *Anglin* v. *Kingston*, 16 U. C. Q. B. 121; *Crawford* v. *Cobourg*, 21 U. C. Q. B. 113; see further, note *b* to sec. 296.)

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made to quash the same within the next term after the promulgation thereof. (*k*) *Vide* 35 V. c. 26, s. 22.

Form of debenture.

**299.** Every debenture issued under the sections of this Act, numbered four hundred and sixty-three, four hundred and sixty-four, and four hundred and sixty-five, inclusive, shall bear on its face the words "Local Improvement Debenture," and shall contain a reference, by date and number, to the By-law under which it is issued. (*l*) 29-30 V. c. 51, s. 304.

Mode of transfer may be prescribed.

**300.** Any debentures to be issued by any Municipal Council may contain a provision in the following words; "This debenture, or any interest therein, shall not, *after* a certificate of ownership has been endorsed thereon by the Treasurer of this Municipal Corporation, be transferable; (*m*)

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(*k*) See sec. 240 and notes thereto.

(*l*) Ordinary debentures must be sealed with the seal of the Corporation, and be signed by the head thereof. (See sec. 296.) The requirements contained in this section are in addition to the ordinary requirements. The purpose of the section is to distinguish debentures which are secured only on particular localities in a Municipality from those which have all the liable property of the Municipality as security.

(*m*) Debentures in the United States are held to be negotiable. They are designed for the raising of money for some particular purpose mentioned in the By-law authorizing the same. Unless negotiable, that purpose would be defeated. They pass from hand to hand as other negotiable securities. (See *Mercer County* v. *Hacket*, 1 Wall. 83; *Meyer* v. *Muscatine*, *Ib.* 384; *Gelpcke* v. *Dubuque*, *Ib.* 175; *Miami* v. *Waine County*, 2 Black. 722; *Chapin* v. *Railroad Co.*, 8 Gray, 575; *Clapp* v. *Cedar County*, 5 Iowa, 15; *Craig* v. *Vicksburg*, 31 Miss. 216; *Morris Canal Co.* v. *Fisher*, 1 Stoct. Ch. 667; *Clark* v. *Janesville*, 10 Wis. 136; *Gould* v. *Sterling*, 23 N. Y. 464; *White* v. *Railroad Co.*, 21 How. 575; *Bank* v. *Railroad Co.*, 4 Duer. 480; *Commissioners* v. *Bright*, 18 Ind. 93; *Aurora* v. *West*, 22 Ind. 197; *De Voss* v. *Richmond*, 18 Gratt. 338; *State* v. *Madison*, 7 Wis. 688; *Maddox* v. *Graham*, 2 Met. (Ky.) 56.) So the principle of negotiability has been applied to the coupons, even though detached from the debenture. (*Thompson* v. *Lee County*, 3 Wall. 327; *Murray* v. *Lardner*, 2 Wall. 110; *City* v. *Lamsom*, 9 Wall. 478; *Johnson* v. *Stark Co.*, 24 Ill. 75; *Knox County* v. *Aspinwall*, 21 How. 539; *Railroad Co.* v. *Otoe Co.*, 1 Dillon, C. C. R., 338.) Indeed, debentures and coupons have been held in the United States to be so far negotiable as to render persons endorsing them liable as endorsers. (*Bull* v. *Sims*, 23 N. Y. 570; see also *Campbell* v. *Polk County*, 3 Iowa, 467; *Fairchild* v. *Ogdensburg Railroad Co.*, 15 N. Y. 337; *Hodges* v. *Shuler*, 22 N. Y. 114; *Keller* v. *Hicks*, 22 Cal. 457.) It was by sec. 215 of the Municipal Act of 1866 declared that a debenture, made payable to any person or order, should, after the endorsation thereof in blank by such person, be transferable by

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except by entry by the Treasurer or his Deputy in the Debenture Registry Book of the said Corporation at the town (*or* village) of ," (*n*) or to the like effect. (*o*) *New.*

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delivery from the time of the endorsation. The section has not been re-enacted in this Act, probably for the reason that it might be held unconstitutional, as relating to bills of exchange and promissory notes which are the subject exclusively of Dominion legislative control. It is expressly declared by the Ontario Legislature that the bonds or debentures of Corporations, made payable to bearer or to any person named therein, may be transferred by delivery (35 Vic. cap. 12, s. 2), and that such transfer shall vest the property of such bonds or debentures in the holder thereof to enable him to maintain an action in his own name. (*Ib.*) Such was in effect the provision of sec. 214 of the Municipal Act of 1866. The fact that a debenture was, when duly signed and sealed, feloniously stolen from the Corporation and transferred to the plaintiff, a *bona fide* holder, for value, was held to afford no defence. (*Trust & Loan Co.* v. *Hamilton*, 7 U. C. C. P. 98.) Holders for value, without notice of the equities between the original parties, are not bound by such equities. (*In re Imperial Land Co. of Marseilles*, L. R. 11 Eq. 478.) Where a Corporation issues debentures, knowing they may be assigned, the Corporation may be estopped as against the assignee from setting up, that the debentures were illegally issued. (*Webb et al* v. *Herne Bay*, L. R. 5 Q. B. 642.) By an Act of Parliament commissioners were appointed who were to expend money in improving a Town. They were authorized to levy rates on the Town and to borrow money on the security of the rates, giving bonds for the money so borrowed, of which £100 at the least should be chosen by lot and paid off every year. Interest on the bonds had been duly paid and, except in two years, £100 had been paid off every year, but more than £15,000 remained on the security of the bonds. *Held*, that holders of such bonds to the amount of £800 were not entitled to the immediate payment out of rates or to a receiver of the rates. (*Preston* v. *Great Yarmouth*, L. R. 7 Ch. App. 655; see further, *Crouch* v. *Credit Foncier*, L. R. 8 Q. B. 374; note *b* to sec. 296, sec. 298 and notes thereto, and note *h* to sec. 472.)

(*n*) The design of this section is so far to control the negotiability of the debenture as to enable the Municipal Corporation at any time and at all times to have a knowledge of the holder of it. This is in the first instance effected by a declaration against general negotiability on the face of the debenture, in the form given in the section. After the endorsement of ownership by the Treasurer, no legal transfer of the debenture can be made, except by entry by the Treasurer or his Deputy in the Debenture Registry book. The provision is analogous to that against transfer of property in a ship, except in a particular mode, after certificate of ownership granted. (See *Sherwood* v. *Coleman*, 6 U. C. Q. B. 614; *Orser* v. *Mounteney*, 9 U. C. Q. B. 382; *Chisholm* v. *Potter*, 11 U. C. C. P. 165; *Wilson et al* v. *Cameron*, 22 U. C. C. P. 198.) The effect of the provision will be to a great extent to impede and restrain the negotiability of the debentures to which it relates.

(*o*) Or to the like effect.—See note *h* to sec. 238.

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Debenture registry book.

**301.** The Treasurer of every Municipality issuing any debentures containing the provision in the last section mentioned, shall open and keep a Debenture Registry Book, in which he shall enter a copy of all certificates of ownership of debentures, which he may give, and also every subsequent transfer of any such debenture. (*p*) Such entry shall not be made except upon the written authority of the person last entered in such book as the owner of such debenture, or of his executors or administrators, or of his or their lawful attorney, which authority shall be retained by the said treasurer and duly filed. (*q*) *New.*

Registered debentures transferred by entry, &c.

**302.** After such certificate of ownership has been endorsed as aforesaid, such debenture shall only be transferable by entry, by the Treasurer of the Municipality or his Deputy, in such Debenture Registry Book from time to time as transfers of such debenture are authorized by the then owner thereof, or his lawful attorney. (*r*) *New.*

Council may authorize the borrowing of sums to pay current expenses.

**303.** The Council of every Municipality may authorize its head, with the Treasurer thereof, under the seal of the Corporation, to borrow from any person or bank such sums as may be required to meet the then current expenditure of the Corporation until such time as the taxes levied therefor can be collected, (*s*) and the Council shall by By-law regulate the amounts to be so borrowed, and the promissory note or notes be given in security therefor. (*t*)

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(*p*) See note *n* to sec. 300.

(*q*) No provision is made for the payment of any fees to the Treasurer for the services directed. The rule is, that a public officer is not entitled to payment for duties imposed upon him by statute in the absence of an express provision for such payment. (See *Jones* v. *Carmarthen*, 8 M. & W. 805; *Askin* v. *London*, 1 U. C. Q. B. 292.)

(*r*) See note *n* to sec. 300.

(*s*) It is doubtful whether, in the absence of an express authority to borrow money, a Municipal Corporation has the power to borrow even to meet current expenditure. (See note *k* to sec. 248.) The power to give a promissory note for money borrowed was also a subject of doubt. (See *Attorney-General* v. *Lichfield*, 13 Sim. 547; see further, note *u* to sec. 304.) In the past, some Municipalities have assumed to borrow money from banks, and to give promissory notes for payment; but the Legislature, to remove all doubt, has in express language conferred the power, subject to certain reasonable limitations. (See further, note *u* to sec. 304.)

(*t*) The power is to borrow to meet "the current expenditure of the Corporation," which, under ordinary circumstances, should be met by the collection of taxes. So the duration of the loan is only

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**304.** No Council shall, unless specially authorized so to do, make or give any bond, bill, note, debenture or other undertaking, for the payment of a less amount than one hundred dollars; and any bond, bill, note, debenture or other undertaking issued in contravention of this section shall be void; (*u*) Provided always that nothing herein contained shall be construed to affect or repeal so much of the provisions of sections two hundred and eighteen, two hundred and nineteen, and two hundred and twenty of the Act of Parliament of the late Province of Canada, passed in the session held in the twenty-ninth and thirtieth years of the reign of Her present Majesty, and chaptered fifty-one, as is

Without special authority, no bond, &c., to be given for less than $100.

Proviso.

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to be "until such time as the taxes levied therefor can be collected." The security to be given for the loan is a promissory note. The power is to be exercised only by By-law. The By-law should regulate—

1. The amount or amounts to be borrowed.

2. The promissory note or notes to be given as security therefor.

The Corporation cannot make a legal promissory note for a less sum than $100. (See sec. 304.) In Cities the Council may by By-law require the payment of taxes to be made into the office of the Treasurer by a day named, and in default may impose an additional percentage charge apparently for the purpose of meeting interest on moneys borrowed under this section by reason of the delay in payment of taxes. (See note *k* to sec. 200.)

(*u*) It has been said that the power to execute bonds, deeds and covenants is inseparable from the existence of all Corporations, public and private. (See *Commonwealth* v. *Pittsburg*, 41 Pa. St. 278; see also *Douglass* v. *Virginia City*, 5 Nevada, 147.) "Generally speaking, all Corporations are bound by a covenant under their corporate seal, properly affixed, which is the legal mode of expressing the will of the entire body, and are bound as much as an individual by his own deed. . . . . But where a Corporation is created by an Act of Parliament, *for particular purposes with special powers*, then indeed another question arises, their deed, though under their corporate seal and that regularly affixed, does not bind them if it appear, by the express provisions of the statute creating the Corporation, or by necessary or reasonable inference from its enactments, that the deed was *ultra vires;* that is, that the Legislature meant that such a deed should not be made." (*Per* Parke, B., in *S. Y. Railway Co.* v. *G. N. Railway Co.*, 9 Ex. 55, 84; adopted by Martin, B., in *Payne* v. *Brecon*, 3 H. & N. 579; see also *Holdsworth* v. *Dartmouth*, 11 A. & E. 490; *The Queen* v. *Lichfield*, 4 Q. B. 893; *Pallister* v. *Gravesend*, 9 C. B. 774; *Nowell et al* v. *Worcester*, 9 Ex. 457; *Kendall* v. *King*, 17 C. B. 483.) The power to make bonds, bills, notes, debentures and other undertakings for the security of money borrowed is here expressly recognized and restricted to this extent, that the power shall not be exercised "for the payment of a less amount than $100," and with the emphatic declaration that any such security issued in contravention of the Act "shall be void." An exception is created by sec. 471, sub. 3.

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intended to prohibit Municipal Councils acting as bankers, or issuing notes to circulate as those of a bank. (v) *Vide* 29-30 V. c. 51, s. 218.

## TITLE VI.—RESPECTING THE ADMINISTRATION OF JUSTICE AND JUDICIAL PROCEEDINGS.

DIVISION I.—CORONERS AND JUSTICES OF THE PEACE.
DIVISION II.—PENALTIES.
DIVISION III.—WITNESSES AND JURORS.
DIVISION IV.—CONVICTIONS UNDER BY-LAWS.
DIVISION V.—EXECUTIONS AGAINST MUNICIPAL CORPORATIONS.
DIVISION VI.—COSTS IN "MANDAMUS."
DIVISION VII.—CONTRACTS ALIKE VOID IN EQUITY AND IN LAW.
DIVISION VIII.—POLICE OFFICE AND POLICE MAGISTRATE.
DIVISION IX.—BOARD OF COMMISSIONERS OF POLICE AND POLICE FORCE.

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(v) Banking, Criminal Law, and Criminal Procedure Law, are all subjects which, under the B. N. A. Act, appertain exclusively to the Dominion Legislature. (B. N. A. Act, s. 91, sub. 15 & 27.) The Act of 1866 was passed by the Legislature of the late Province of Canada, before Confederation, and therefore at a time when no question of its constitutionality could be properly raised against it. The sections 218 and 219 of the Act to some extent relate to Crime, if not to Banking, and so the Legislature of Ontario has very properly said that "nothing herein contained shall be construed to affect or repeal" so much of them "as is intended to prohibit Municipal Councils acting as bankers or issuing notes to circulate as those of a bank." In other instances the Legislature has seen fit, after declaring that nothing herein contained shall be taken or construed to affect or repeal similar sections, to set forth the whole section in words at length. (See secs. 367, 369.) The sections 218 and 219 of the Act of 1866 are in like manner subjoined for purposes of reference. The reference to section 220, in the text, is a mistake. That section relates to matters over which the Legislature of Ontario has no jurisdiction, and is in truth re-enacted by section 224 of this Act.

RESTRICTIONS UPON COUNCILS.

218. No Council shall act as bankers, or issue any bond, bill, note, debenture or other undertaking, of any kind or in any form, in the nature of a bank bill or note, or intended to form a circulating medium, or to supply the place of specie, or to pass as money; nor, unless specially authorized so to do, shall any Council make or give any bond, bill, note, debenture or other undertaking, for the payment of a less amount than one hundred dollars; and any bond, bill, note, debenture or other undertaking, issued in contravention of this section, shall be void.

219. In case any person issues or makes, or assists in issuing or making, or knowingly utters or tenders in payment or exchange, any bond, bill, note, debenture or undertaking, of any kind or in any form, in the nature of a bank bill or note, intended to form a circulating medium, or to supply the place of specie, or to pass as money, contrary to this Act, such person shall be guilty of a misdemeanor.

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DIVISION X.—COURT HOUSE, GAOLS AND OTHER PLACES OF IMPRISONMENT.
DIVISION XI.—INVESTIGATIONS AS TO MALFEASANCE OF CORPORATE OFFICERS.
DIVISION XII.—WHEN MAYOR MAY CALL OUT "POSSE COMITATUS."

## DIVISION I.—CORONERS AND JUSTICES OF THE PEACE.

*Coroners. Sec. 305.*
*Justices of the Peace—who are Ex-officio. Sec. 306, 307.*
*Jurisdiction of County, City and Town Justices. Sec. 308-313.*
*Qualification of certain Justices. Sec. 314.*

Appointment of coroners.

**305.** One or more Coroners may be appointed for any Incorporated City or Town. (*a*) *Vide* 29-30 V. c. 51, s. 298.

Certain persons to be ex officio justices of the peace.

**306.** The head of every Council, the Police Magistrate of every City and Town, and Reeve of every Town, Township and Incorporated Village, shall, *ex officio*, be Justices of the Peace for the whole County, or Union of Counties, in which their respective Municipalities lie, (*b*) and Aldermen in Cities shall be Justices of the Peace in and for such Cities. (*c*) 32 V. c. 6, s. 11.

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(*a*) It is not said by whom the appointment is to be made, but it is understood by the Executive. (See note *cc* to sec. 332.) The office of Coroner is of equal antiquity with that of Sheriff. (Mirror, cap. 1, s. 3.) The authority of a Coroner is judicial and ministerial; *judicial* where one comes to a violent death, or a house or building is destroyed by fire in a City, Town or Village, in which case he is to take inquest (4 Inst. 271; Con. Stat. Can. cap. 88); *ministerial* where the Coroner executes the Queen's writs on exception to the Sheriff, as by his being a party to a suit, or of kin to either of the parties, &c. (*Ib.*) See further, Boys on the Office and Duties of Coroners, p. 6.

(*b*) The ordinary rule is that the jurisdiction of a local officer is not to be extended beyond the Municipality of which he is an officer. But as many of the criminals who find their way into Cities and Towns are from rural Municipalities, and as some of those who escape from Cities and Towns find their way into rural Municipalities, in order to avoid the backing of warrants in such cases, it has been deemed proper to make the officers in this section mentioned not simply "*ex officio* Justices of the Peace," but *ex officio* Justices of the Peace "for the *whole* County or Union of Counties in which their respective Municipalities lie."

(*c*) The declaration is not, as in the former part of the section, that the officers named shall be *ex officio* Justices of the Peace, but that "Aldermen in Cities *shall be Justices of the Peace in and for such Cities.*" It was formerly provided that before any Alderman should act in the capacity of a Justice of the Peace for the City or County, he should take the same oath of qualification and in the same manner as is by law required by Justices of the Peace. (31 Vic. cap. 30, s. 38.) This was an addition to sec. 357 of the Municipal Act of 1866, which contained no such provision; and, in



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Police magistrate *ex officio* justice of the peace.

**307.** Every Police Magistrate shall also *ex officio* be a Justice of the Peace for the City or Town for which he holds office. (*d*) 32 V. c. 6, s. 11.

Where there is a police magistrate, other justices of the peace not to act.

**308.** No other Justice of the Peace shall admit to bail, or discharge a prisoner, or adjudicate upon, or otherwise act in any case for any Town or City where there is a Police Magistrate, (*e*) except in the case of the illness, absence, or at the request of the Police Magistrate. 32 V. c. 6, s. 11.

Jurisdiction of police magistrates and mayors over certain offences.

**309.** The Police Magistrate, (*f*) or, when there is no Police Magistrate, the Mayor of a Town or City (*g*) shall

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consequence, it was held that a warrant of commitment signed by an Alderman who had not so qualified was invalid to uphold the detention of the prisoner confined under it. (*The Queen* v. *Boyle*, 4 Prac. R. 256; s. c. 4 U. C. L. J. N. S. 256.) It is now provided that no Alderman, &c., after taking the oaths or making the declaration as such, shall be required to have any property qualification or to take any further oath to enable him to act as a Justice of the Peace. (Sec. 314.)

(*d*) The authority of Justices of the Peace appointed by the Crown, is limited to the locality specified in their commissions. It is in no case attached to the person, so as to be capable of being exercised elsewhere than within those limits. A Justice of the Peace, for the time that he shall make his abode or be out of the County where he is in commission, cannot intermeddle or take any recognizance or any examination, or otherwise exercise his authority in any matter that shall happen within the County where he is in commission. Neither can he cause one to be brought before him out of the County where he is in commission, "for being out of the County where he is in commission, he is but as a private man." (See Paley on Convictions, 5 Ed. 18.) A Police Magistrate has generally, as regards the City or Town of which he is an officer, the same jurisdiction as Justices of the Peace have in their several Counties, and his proceedings should be conducted in the same manner as if he were a commissioned Justice of the Peace. He is not only *ex officio* a Justice of the Peace for the City or Town for which he holds office, but as well for the County or Union of Counties in which the City or Town is situate. (Sec. 306.)

(*e*) The intention of this section, read in connection with the preceding section, of which it really forms a part, is that in a City or Town having a Police Magistrate, the Police Magistrate, unless prevented from acting by illness or absence, shall, in respect of offences committed in the City or Town, be the only Magistrate entitled to act as such. But nothing in this section contained can be held to exclude the right of a Stipendiary Magistrate to act in extradition cases in such City or Town. (*The Queen* v. *Morton et al*, 19 U. C. C. P. 1.)

(*f*) See note *d* to sec. 307.

(*g*) Although the Mayor is *ex officio* a Justice of the Peace (sec. 306), he is only entitled to act as such where there is no Police Magistrate.

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have jurisdiction, in addition to his other powers, to try and determine all prosecutions for offences against the By-laws of the Town or City, and for penalties for refusing to accept office therein, or to make the necessary declarations of qualification and office. (*h*) 29-30 V. c. 51, s. 212.

Jurisdiction of justices under by-laws.

**310.** Every Justice of the Peace for a County (*i*) shall have jurisdiction in all cases arising under any By-law of any Municipality in such County, where there is no Police Magistrate. (*k*) 29-30 V. c. 51, s. 364.

Jurisdiction in cases not specially provided for.

**311.** In case an offence is committed against a By-law of a Council, for the prosecution of which offence no other provision is made, (*l*) any Justice of the Peace, having jurisdiction in the locality where the offender resides or where the offence was committed, whether the Justice is a member of the Council or not, may try and determine any prosecution for the offence. 29-30 V. c. 51, s. 208.

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or in case of the illness or absence of the Police Magistrate, or by his request (sec. 308).

(*h*) The jurisdiction is to try and determine—

1. All prosecutions for offences against the By-laws of the Town or City.

2. All prosecutions for penalties for refusing to accept office therein, or to make the necessary declarations of qualification and office.

(*i*) See note *d* to sec. 307.

(*k*) The meaning of this section is not free from doubt. The language used is very comprehensive. *Every* Justice of the Peace for a County shall have jurisdiction in *all cases* arising under *any* By-law of *any* Municipality in such County where there is no Police Magistrate. This is broad enough to give jurisdiction to County Justices, in the cases mentioned, over offences against By-laws committed in Cities and Towns, provided there be no Police Magistrate in such Cities and Towns. (See sec. 312.)

(*l*) The Corporation of any County, Township, City, Town or Incorporated Village, may pass By-laws for inflicting *reasonable fines* and penalties not exceeding $50, exclusive of costs, for breach of any of the By-laws of the Corporation, and for inflicting *reasonable punishment or imprisonment*, with or without hard labour, for any period not exceeding 21 days, for breach of any of the By-laws of the Corporation, in case of the non-payment of the fine inflicted for any such breach, and there being no distress out of which the fine can be levied, with certain specified exceptions. (Sec. 372.) The jurisdiction of the Justice is made to depend either on the locality where the offender resides or where the offence was committed. A Justice having jurisdiction in either locality may not only try but determine the prosecution. The authority of a Justice, who is so by virtue of his office as Mayor, Reeve, &c., is limited to the County in which his Municipality is situate, and the authority of a Justice of the Peace

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Jurisdiction of county justices in certain towns.

**312.** Nothing herein contained shall interfere with the jurisdiction of Justices of the Peace, for the County in which a Town having no Police Magistrate is situate, over offences committed in the Town. (*m*) 29-30 V. c. 51, s. 361.

When certain commissions of peace to cease.

**313.** When a Town has been erected into a City, (*n*) and the Council of the City duly organized, every commission of the peace theretofore issued for the Town shall cease. (*o*) 29-30 V. c. 51, 359.

Qualification of certain officials.

**314.** No Warden, Mayor, Reeve, Alderman, or Police Magistrate, (*p*) after taking the oaths or making the declarations as such, shall be required to have any property qualification, or to take any further oath to enable him to act as a Justice of the Peace. (*q*) 29-30 V. c. 51, s. 358.

DIVISION II.—PENALTIES.

*Recovery and Application thereof. Sec. 315, 316.*
*Where Offence against By-laws. Sec. 317–319.*

Recovery and enforcement of penalties.

**315.** Every fine and penalty imposed by or under the authority of this Act (*r*) may, unless where other provision

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appointed by commission from the Crown is limited to the County therein specified. (See note *d* to sec. 307.)

(*m*) A Town not separated from the County for certain judicial and Municipal purposes remains a part of the territorial jurisdiction of the County. Justices for the County have, therefore, jurisdiction over offences committed in the Town, provided there be no Police Magistrate in such Town. (See sec. 308.)

(*n*) Which may be done pursuant to sec. 15.

(*o*) A power to issue a commission appointing Justices for a City, though not expressly recognized, seems to be implied. Besides, the Mayor and Aldermen of a City are *ex officio* Justices of the Peace for such City. (Sec. 306.)

(*p*) It is the policy of the law to require all persons entitled to discharge the subordinate but responsible and, it may be, arbitrary duties of a Justice of the Peace, to have some property qualification to answer to persons aggrieved by their misconduct. No person can be a Warden, Mayor or Reeve without having some property qualification. The possession of these offices, therefore, is some guarantee of property. But a Police Magistrate, as such, is not required to possess any property; and it is difficult to understand why he, of all local Justices of the Peace, should be exempt from having a property qualification.

(*q*) See note *c* to sec. 306.

(*r*) A By-law without a penalty would be nugatory; so power is given to Municipal Councils to pass By-laws for inflicting reasonable punishment, with or without hard labour, either in a lock-up house in some Town or Village in the Township, or in the County gaol or house of correction, for any period not exceeding twenty-one days,

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is specially made therefor, (*s*) be recovered and enforced, with costs, (*t*) by summary conviction, before any Justice of the Peace for the County or of the Municipality in which the offence was committed; (*u*) and in default of payment, the offender may be committed to the common gaol, house of correction, or lock-up house of such County or Municipality, there to be imprisoned for any time, in the discretion of the convicting Justice, not exceeding, unless where other provision is specially made, thirty days, unless such fine and penalty, and costs, including the costs of the committal, be sooner paid. (*v*) 29-30 V. c. 51, s. 355, sub. 23.

Imprisonment in default of payment.

**316.** When not otherwise provided, every pecuniary penalty recovered before any Justice of the Peace under

Application of penalties.

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for breach of any of the By-laws of the Council (sec. 372, sub. 13), in case of non-payment of the fine inflicted for any such breach, and there being no distress found out of which such fine can be levied, except for breach of any By-law or By-laws in Cities, and the suppression of houses of ill-fame, for which the imprisonment may be for any period not exceeding six months, in case of the non-payment of the costs and fines inflicted, and there being no sufficient distress.

(*s*) Where power is given to enforce payment of a penalty in a particular mode, the power to enforce in any other mode is impliedly excluded. (*Kirk* v. *Nowill*, 1 T. R. 118, 125; *Hart* v. *Mayor, &c.*, 9 Wend. 571, 588; *Heise* v. *Town Council*, 6 Richd. S. C. 404; *Cotter* v. *Doty*, 5 Ohio, 394; *Miles* v. *Chamberlain*, 17 Wis. 446; *Bolte* v. *New Orleans*, 10 La. An. 321; *Grand Rapids* v. *Hughes*, 15 Mich. 54.)

(*t*) Before the 18 Geo. III. cap. 19, was passed in England, there was no *general* power enabling a convicting Justice to award costs. Special provisions to that effect were, however, inserted in particular Acts. (See *Skingley* v. *Surridge*, 11 M. & W. 503; *Wray* v. *Toke*, 12 Q. B. 492, 510.) The Justice cannot delegate to another the power to ascertain the costs. (*The King* v. *St. Mary's, Nottingham*, 13 East. 57 n; *Sellwood* v. *Mount*, 1 Q. B. 726; *Lock* v. *Sellwood*, *Ib.* 736; *The Queen* v. *Clark*, 5 Q. B. 887.) The amount of costs should be specified in the conviction. (*Bott* v. *Ackroyd*, 28 L. J. Mag. Cas. 207; see also *The Queen* v. *Ely*, 5 E. & B. 489; see further, *Tarry* v. *Newman*, 15 M. & W. 645, 653; *Wray* v. *Toke*, 12 Q. B. 492, 509; *The Queen* v. *Glamorganshire*, 19 L. J. Mag. Cas. 172; *The Queen* v. *Merionethshire*, 1 D. & M. 121; *The Queen* v. *Westmoreland*, 1 D. & L. 178; *Ex parte Holloway*, 1 Dowl. 26.) Where the Justices left blanks for the amount of costs, it was held to be an irregularity but not an excess of jurisdiction, so as to render them liable to be sued. (*Bolt* v. *Ackroyd*, 28 L. J. Mag. Cas. 207; *The Queen* v. *Ely*, 5 E. & B. 489.)

(*u*) See note *b* to sec. 306.

(*v*) It has been held that where corporal punishment is substituted for the penalty in the event of non-payment, the punishment is not to extend to the non-payment of the costs. (*The Queen* v. *Barton*, 13 Q. B. 389; see also *Barton* v. *Bricknell*, *Ib.* 393.)

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this Act, shall be paid and distributed in the following manner: (*a*) one moiety to the City, Town, Village or Township in which the offence was committed, and the other moiety thereof, with full costs, to the person who informed and prosecuted for the same, (*b*) or to such other person as to the Justice may seem proper. (*c*) 29-30 V. c. 51, s. 355, sub. 25.

Evidence.

**317.** The Justice or other authority before whom a prosecution is had for an offence against a Municipal By-

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(*a*) If the statute under which the conviction takes place applies the penalty with certainty, it is sufficient for the Justice to award the penalty to be paid and applied according to law. (*The King* v. *Barrett*, 1 Salk. 383; *The King* v. *Seale*, 8 East. 573; *The King* v. *Thompson*, 2 T. R. 18; *The Queen* v. *Hyde*, 21 L. J. Mag. Cas. 94; *Re Boothroyd*, 15 M. & W. 1; *The Queen* v. *Cridland*, 7 E. & B. 853; *The Queen* v. *Johnson*, 8 Q. B. 102; see also *The Queen* v. *Glossop*, 4 B. & Al. 616; *Brown* v. *Nicholson*, 5 C. B. N. S. 468; *Seamen's Hospital* v. *Liverpool*, 4 Ex. 180; *Wray* v. *Ellis*, 1 E. & E. 276.) If there be any material variance between the conviction and the statute as to the appropriation of the penalty, the conviction will be bad. (*Griffith* v. *Harris*, 2 M. & W. 335; *Chaddock* v. *Wilbraham et al*, 5 C. B. 645.) It is declared that "when not otherwise provided," every pecuniary penalty recovered before any Justice of the Peace under this Act, shall be distributed in the manner directed; but it is enacted by section 319 of this Act, which apparently applies to all convictions for offences against By-laws under the Act, that when the penalty has been levied, "one moiety thereof *shall* go to the informer or prosecutor, and the other moiety to the Municipal Corporation," unless "the prosecution is brought in the name of the Corporation, in which case the whole of the pecuniary penalty shall be paid to the Corporation."

(*b*) It is the policy of the law under penal statutes to give a portion of the penalty, generally one-half, to the informer. Even this large proportion seldom has its effect. "The moiety of the informer's share of the penalty should be preserved to him. Under the By-law as it stands, he gets no share; and it may damp the energies of a class of people who are supposed by the Legislature to be necessary, and to do good service, if the reward which stimulates them to action is taken away." (*Per* Wilson, J., *In re Snell* v. *Belleville*, 30 U. C. Q. B. 81, 89.)

(*c*) In this case, supposing the Justice to have the power, notwithstanding the provisions of sec. 319, to make the selection, the Justice should on the face of the conviction make the selection. Where the statute gives a discretion, either as to the amount of the penalty or its application, the Justice must, on the face of the conviction, show in what manner the discretion has been exercised. (*The King* v. *Dimpsey*, 2 T. R. 96; *The King* v. *Symonds*, 1 East. 189; *Re Boothroyd*, 15 M. & W. 1; *The King* v. *Seale*, 8 East. 568, 573; *The King* v. *Smith*, 5 M. & S. 133; *The Queen* v. *Johnson*, 8 Q. B. 102; *Wray* v. *Toke*, 12 Q. B. 492; see also *The King* v. *Wyatt*, 2 Ld. Rayd. 1478; *The King* v. *Priest*, 6 T. R. 538.)

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law, (*d*) may convict the offender on the oath or affirmation of any credible witness, (*e*) and shall award the whole or

Award of penalty and costs.

(*d*) See sec. 372, sub. 13.

(*e*) "Credible witness." It might be argued, from the use of these words, that the Justice should not be at liberty to examine any witness to whom he might think proper to give credit. But, according to the interpretation put upon similar words in the constitution of the Statute of Frauds, 29 Car. 2, cap. 3, sec. 5, *credible* witness is equivalent to *competent* witness. (*Hawes* v. *Humphrey*, 9 Pick. 350; *Haven* v. *Hilliard*, 23 Pick. 10; *Amory* v. *Fellows*, 5 Mass. 219; *Sears* v. *Dillingham*, 12 Mass. 288; Jarman on Wills, 3rd Ed. 82.) So that such witnesses only can be properly examined who are competent witnesses in a Court of Justice. When pecuniary interest amounted to a disqualication, the informer, when entitled to a portion of the penalty, was incompetent both on the ground of interest and on the ground of being a party entered on the record. (*The King* v. *Tilly*, 1 Str. 316; *The King* v. *Stone*, 2 Ld. Rayd. 1545; *The King* v. *Blaney*, Andr. 240; *The King* v. *Piercy*, *Ib.* 18; *The King* v. *Robotham*, 3 Burr. 1472; *The King* v. *Shipley*, cited in Gilb. 113; *The King* v. *Cobbold*, Gilb. 111; *Portman* v. *Okeden*, Say. 179; *The King* v. *Blackman*, 1 Esp. 96; but see *Jennings* v. *Hankeys*, 3 Mod. 114; *The King* v. *Johnson*, Willes, 425, note *c.*) But, so far as this Act is concerned, it is expressly provided that "any person, including the person giving or making the information or complaint, shall be a competent witness." (Sec. 320.) It is also now expressly declared that on the trial of any *proceeding*, *matter* or *question* under any of the Acts of the Province of Ontario relating to tavern or shop licenses, or under the Municipal Institutions Act of Ontario, or under the Assessment Act of Ontario, or under any other Act of the Legislative Assembly of the Province of Ontario, or on the trial of any proceeding, matter or question *before any Justice or Justices of the Peace*, Mayor or Police Magistrate, in any matter cognizable by such Justice or Justices, Mayor or Police Magistrate, *not being a crime*, the party opposing or defending, or the wife or husband of such party opposing or defending, shall be *competent* and *compellable* to give evidence in such proceeding, matter or question. Interest is now no longer a ground of disqualification in any witness (Con. Stat. U. C. 32, s. 3, 4; 33 Vic. cap. 13. s. 2, 3, Ont.); nor, with a few exceptions, is the fact that he is a party to the record. One of these is that no person shall be compellable to answer any question tending to criminate himself or to subject him to a prosecution for a penalty. (*Ib.* sec. 5, sub. *d.*) None of these provisions relax or affect the law of evidence in regard to criminal procedure. Persons put on trial for a criminal offence cannot testify for or against themselves. (See *Winsor* v. *The Queen*, 7 B. & S. 490; L. R. 1 Q. B. 390; 10 Cox, 276; *Attorney-General* v. *Radloff*, 10 Ex. 84.) If imprisonment may in the first instance follow the conviction, the proceeding is in general looked upon as a criminal one. (*Per* Platt, B., in *Attorney-General* v. *Radloff*, 10 Ex. 84.) There are many crimes, properly so called, which are liable to be punished on summary conviction. But there are a vast number of *acts* which in no sense are crimes, which are also punishable; such, for instance, as keeping open house after certain hours, and a variety of breaches of police regulations which will readily occur to the mind of anyone.

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How levied.

such part of the penalty or punishment imposed by the By-law as he shall think fit, (*f*) with the costs of prosecution, (*g*) and may, by warrant, under the hand and seal of the Justice or other authority, or in case two or more Justices act together therein, then under the hand and seal of one of them, (*h*) cause any such pecuniary penalty and costs, or costs only, if not forthwith paid, to be levied by distress and sale of the goods and chattels of the offender. (*i*) 29-30 V. c. 51, s. 209.

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(*Per* Baron Martin, in same case, p. 96.) Where the proceeding is conducted with a view and for the purpose of obtaining redress for the violation of a private right only, the proceeding is a civil one; but, on the other hand, where the proceeding is directed for the punishment of an offence which militates against the general interests of the community, and for the punishment of the infraction of some public duty, such proceeding is a criminal proceeding. (*Per* Sir Alexander Cockburn, in arguing same case, p. 86.) It is not an easy matter to draw a line, and so be able to decide on which side of it each case should be placed. Reference may be made to the following cases: *Attorney-General* v. *Bowman*, 2 B. & P. 532, n.; *Attorney-General* v. *Siddam*, 1 C. & J. 220; *Ex parte Beeching*, 4 B. & C. 136; *Huntley* v. *Luscombe*, 2 B. & P. 530; *Rackham* v. *Bluck*, 9 Q. B. 691; *Cobbett* v. *Slowman*, 9 Ex. 633; *Ex parte Eggington*, 2 E. & B. 717; *The Queen* v. *Thompson*, 16 Q. B. 832; *The Queen* v. *Jackson*, 6 Cox, 525; *The Queen* v. *Whittaker*, 1 Den. 310; *Reeve* v. *Wood*, 34 L. J. Mag. Cas. 15; *Sweeney* v. *Spooner*, 3 B. & S. 329: *Attorney-General* v. *Sullivan*, 32 L. J. Ex. 92; *Easton's Case*, 12 A. & E. 645; *Cattel* v. *Ireson*, E. B. & E. 91; *Morden* v. *Porter*, 7 C. B. N. S. 641; *Hearne* v. *Garton*, 2 E. & E. 66; *Parker* v. *Green*, 2 B. & S. 299; *In re Lucas and McGlashan*, 29 U. C. Q. B. 81; *The Queen* v. *Boardman*, 30 U. C. Q. B. 553.

(*f*) It may be that the By-law imposes a fixed penalty for the offence. But usually the By-law states a maximum and minimum sum. The power of a Municipal Corporation to impose such a sliding penalty was at one time doubted. (See note *u* to sec. 372, sub. 11.) The power of the Corporation to delegate to the Justice the fixing of the amount was also doubted. (*Ib.*) But as a knowledge of the circumstances of each particular case is essential for the exercise of discretion both as to fine and imprisonment, and as this knowledge can only be obtained by the Justice before whom the offender is brought, it has been deemed right expressly to provide that the Justice shall award "the whole or *such* part of the penalty or punishment imposed by the By-law as *he shall think fit.*" (*In re Snell and Belleville*, 30 U. C. Q. B. 81.)

(*g*) See sec. 372, sub. 11.

(*h*) The warrant must be under "hand and seal," and therefore in writing. (See *Hutchinson* v. *Lowndes*, 4 B. & Ad. 118.)

(*i*) This section applies only to proceedings for offences against Municipal By-laws. Municipal Corporations have no power to create crime or regulate criminal procedure. These are matters appertain-

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**318.** In case of there being no distress found, out of which the penalty can be levied, (*k*) the Justice may commit the offender to the common gaol, house of correction, or nearest lock-up house, for the term, or some part thereof, specified in the By-law. (*l*) 29-30 V. c. 51, s. 210. Commitment in default of distress.

**319.** When the pecuniary penalty has been levied, one moiety thereof shall go to the informer or prosecutor, and the other moiety to the Municipal Corporation, unless the prosecution is brought in the name of the Corporation, in which case the whole of the pecuniary penalty shall be paid to the Corporation. (*m*) 29-30 V. c. 51, s. 211. Fines, how applied.

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ing solely to the Dominion Legislature, under the B. N. A. Act, sec. 91, sub. 27. The fact that the conviction under this section is to be followed by a pecuniary penalty, enforceable by distress, is an additional reason for holding that this section does not contemplate cases of crime. (See note *e* to this section.)

(*k*) The power of imprisonment may be either as the direct punishment for an offence or as the means of enforcing payment of a pecuniary penalty. In the former, the provision would savour of crime (see note *e* to sec. 317); in the latter, of procedure other than criminal procedure. (*Ib.*) Here the power of commitment is contingent on "there being no distress found out of which the penalty can be levied." The commitment, therefore, ought not to be issued till the fact that there is no sufficient distress is ascertained. (*The Queen* v. *Hawkins*, Fort. 272, *per* Parker, C. J.) A Justice who in such a case commits a party without inquiry as to distress, may, if there be a distress, be sued as a trespasser. (*Hill* v. *Bateman*, 2 Str. 710.) Some statutes only allow the commitment to issue upon due proof upon oath of the want of distress. (Geo. III. cap. 108, s. 7.) If the same person be convicted of two penalties, and there be goods enough to answer only one, they may be levied under the one and imprisonment follow on the other. (*The Queen* v. *Wyatt*, 2 Ld. Rayd. 1195; s. c. 11 Mod. 54.) Convictions under the Dominion Fishery Act, 31 Vic. cap. 60, are peculiar in allowing imprisonment if the fine be not *forthwith* paid. (See *Arnott* v. *Bradly*, 23 U. C. C. P. 1.)

(*l*) The committment must be in writing. (*Mayhew* v. *Locke*, 2 Marsh, 377.) It should be drawn up forthwith after the commitment is ordered. (*Re Masters*, 33 L. J. Q. B. 146.) Detention of the party without a written warrant cannot be justified further than necessary to make out the warrant. (*Hutchinson* v. *Lowndes*, 4 B. & Ad. 118.) But the detention of the party till the return of the warrant of distress may, it seems, be by parol. (*Stile* v. *Walls*, 7 East. 533.)

(*m*) It appears that section 316 and this section are to some extent in conflict. Both sections apply to convictions for offences against By-laws; both assume to make regulations for the distribution of penalties recovered under such convictions. This section makes an absolute and exact distribution; the former leaves the distribution to some extent in the power of the convicting Justice. It enables

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DIVISION III.—WITNESSES AND JURORS.

*Informer, Competent, Sec. 320.*
*Ratepayers, Members, Officers, &c., of Corporations as Witnesses. Sec. 321.*
*Liable to challenge as Jurors. Sec. 321.*
*Compelling attendance of Witnesses. Sec. 322.*

Who may be a witness.

**320.** Upon the hearing of any information or complaint, exhibited or made under this Act, any person (including the person giving or making the information or complaint) shall be a competent witness, (*n*) notwithstanding such person may be entitled to part of the pecuniary penalty on the conviction of the offender. 29-30 V. c. 51, s. 355, sub. 24.

Ratepayers, members, officers, &c., of corporation competent witnesses—may be challenged as jurors.

**321.** In any prosecution, suit, action or proceeding in any civil matter (*nn*) to which a Municipal Corporation is a party, no ratepayer, member, officer or servant of the Corporation shall, on account of his being such, be incompetent as a witness; (*o*) but they, and every of them, shall be liable to challenge as a juror, (*p*) except where the Corporation, the party to such prosecution, suit, action or proceeding, is a County. 32 V. c. 6, s. 13.

Compelling witnesses to attend, &c.

**322.** In prosecuting under any By-law, or for the breach of any By-law, witnesses may be compelled to attend and give evidence, in the same manner and by the same process

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the Justice, as to one moiety, to order it to be paid "to the person who informed and prosecuted, or to such *other* person as to the Justice may seem proper." The safer rule would be to act under the section here annotated, whenever the two are found to be in conflict.

(*n*) This removes all ground for supposing that the informant or complainant is, by reason of pecuniary interest, disqualified, but leaves the question as to the competency of the person complained against to be a witness untouched. (See note *e* to sec. 317.)

(*nn*) As to what matters are civil and what criminal, see note *e* to sec. 317.

(*o*) The Evidence Act, Con. Stat. U. C. cap. 32, long before the passing of the Act from which this section is taken, had removed any such disqualification as is here supposed to exist. (See note *e* to sec. 317.)

(*p*) If this means anything, it means that the fact of the person called as a juror being a ratepayer of the Corporation—that is, a party to the civil proceeding in which he is called—shall be a peremptory ground of challenge. Before this Act, such a person "was liable to challenge" for cause. The object of this Act must be to make the challenge good as a peremptory challenge. The only exception to the challenge is where the Corporation "is a County."

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as witnesses are compelled to attend and give evidence on summary proceedings before Justices of the Peace, in cases tried summarily under the statutes now in force, (*q*) or which may be hereafter enacted. 29-30 V. c. 51, s. 363.

DIVISION IV.—CONVICTIONS UNDER BY-LAWS.

*Form of. Sec. 323.*

**323.** It shall not be necessary, in any conviction made under any By-law of any Municipal Corporation, to set out the information, appearance or non-appearance of the defendant, or the evidence or By-law under which the conviction is made, (*r*) but all such convictions may be in the form given in the following schedule: (*s*) Form of conviction under by-laws.

Province of Ontario, } Be it remembered, that on the
County of , } day of A.D. at in
To wit. } the County of , *A. B.* is convicted before the undersigned, one of Her Majesty's Justices Schedule.

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(*q*) If it be made to appear to any Justice of the Peace by the oath or affirmation of any credible person, that any person within the jurisdiction of such Justice is likely to give material evidence on behalf of the prosecutor or complainant or defendant, and will not voluntarily appear at the time and place appointed for the hearing of the information or complaint, the Justice shall issue his summons to such person, under his hand and seal, requiring him to be and appear at a time and place mentioned in such summons, before the Justice, or before such other Justice or Justices of the Peace for the territorial division, as may then be there to testify what he knows concerning the information or complaint. (Con. Stat. Can. cap. 103, sec. 16.) If the person summoned neglect or refuse to appear at the time and place appointed by the summons, and no just excuse be offered for such neglect or refusal, then (after proof upon oath or affirmation of the summons having been served upon such person either personally or by leaving the same for him with some person at his last or most usual place of abode) the Justice or Justices before whom such person should have appeared, may issue a warrant under his or their hands and seals, to bring and have such person at a time and place to be therein mentioned before the Justice who issued the summons, or before such other Justice or Justices of the Peace for the same territorial division as may be then there to testify as aforesaid. (*Ib.* sec. 17.) The warrant may, if necessary, be backed, in order to its being executed out of the jurisdiction of the Justice who issued it. (*Ib.*)

(*r*) The law was formerly otherwise. (*The Queen* v. *Ross*, H. T. 3 Vic. R. & H. Dig. Conviction, 4.)

(*s*) The conviction should show the By-law to have been passed by the Council of the particular Municipality. (*The Queen* v. *Osler*, 32 U. C. Q. B. 332.) The omission of the date or title of the By-law would not be fatal to the conviction, if the By-law be in other respects sufficiently referred to. (*Ib.*)

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of the Peace in and for the said County, for that the said *A. B.* (*stating the offence, and time and place, and when and where committed,*) contrary to a certain By-law of the Municipality of the of , in the said County of ; passed on the day of A.D. , and intituled (*reciting the title of the By-law*); and I adjudge the said *A. B.*, for his said offence, to forfeit and pay the sum of , to be paid and applied according to law, and also to pay to *C. D.*, the complainant, the sum of for his costs in this behalf. (*t*) And if the said several sums be not paid forthwith (*or* on or before the day of , *as the case may be*), I order that the same be levied by distress and sale of the goods and chattels of the said *A. B.*; and in default of sufficient distress, I adjudge the said *A. B.* to be imprisoned in the common gaol of the said County of (*or*, in the public lock-up at ) for the space of days, unless the said several sums, and all costs and charges of conveying the said *A. B.* to such gaol (*or* lock-up), shall be sooner paid.

Given under my hand and seal, the day and year first above written, at , in the said County.

(L.S.) *J. M.*,

29-30 V. c. 51, s. 362. J. P.

DIVISION V.—EXECUTIONS AGAINST MUNICIPAL CORPORATIONS.

*Proceedings thereon. Sec. 324.*
*Municipal Officers, also Officers of Court. Sec. 325.*

Proceedings on writs of execution against municipalities.

**324.** Any writ of execution against a Municipal Corporation (*a*) may be indorsed with a direction to the Sheriff

(*t*) As to award and distribution of the penalty, see sec. 316 and notes thereto.

(*a*) A Municipal Corporation being liable to be sued (see note *d* to sec. 2), is liable to the consequence of a suit, viz., execution. As the assets of the Corporation are not the property of the members of the Council, but of the people whom they represent, the form of proceeding by execution against such a Corporation must, under certain circumstances, differ from that of proceeding by execution against an individual. If it were not for the provisions here made as to execution, it would seem that the judgment creditor's principal remedy would be by writ of mandamus. (*Coy* v. *Lyons*, 17 Iowa, 1; *Supervisors* v. *United States*, 4 Wall. 435; *Galena* v. *Amy*, 5 Wall. 705; *Olney* v. *Harvey*, 50 Ill. 453; *Frank* v. *San Francisco*, 21 Cal. 668; *Schaffer* v. *Cadwallader*, 36 Pa. St. 126; *Van Hoffman* v. *Quincy*, 4 Wall. 535; *Riggs* v. *Johnson Co.*, 6 Wall. 166; *Weber* v. *Lee Co.*, *Ib.* 210; *United States* v. *Keokuk*, *Ib.* 514; *State* v. *Hug*, 44 Mo. 116;

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to levy the amount thereof by rate, (*b*) and the proceedings thereon shall then be the following: (*c*)

Sheriff to deliver copy of writ and statement of claim to treasurer.

(1.) The Sheriff shall deliver a copy of the writ and endorsement to the Treasurer, or leave such copy at the office or dwelling-house of that officer, with a statement in writing of the Sheriff's fees, and of the amount required to satisfy such execution, (*d*) including in such amount the

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*State* v. *Beloit*, 20 Wis. 79; *State* v. *Milwaukee*, *Ib.* 87; *Soutter* v. *Madison*, 15 Wis. 30; *State* v. *Wilson*, 17 Wis. 687; *Waterdown* v. *Cady*, 20 Wis. 501; *Ex parte Halman*, 28 Iowa, 88; *Tilson* v. *Putnam*, 19 Ohio, 415.) It would seem that the private property of the Corporation, *i. e.* such as is held for profit and free from any public trust, may be sold under execution. (*Holladay* v. *Frisbie*, 15 Cal. 630; *Davenport* v. *Insurance Co.*, 17 Iowa, 276; *Louisville* v. *Commonwealth*, 1 Duvall. (Ky.) 295.) It never could be intended by the Legislature that executions could be enforced against property held for public purposes, such as public buildings, hospitals, school houses, &c. (*Schaffer* v. *Cadwallader*, 36 Penn. St. 126; *President* v. *Indianapolis*, 12 Ind. 620; *Lamb* v. *Shays*, 14 Iowa, 567; *Green* v. *Marks*, 25 Ill. 221; *Scott* v. *Union School Sections of Burgess and Bathurst*, 19 U. C. Q. B. 28.) There is certainly no right, independently of statute, in the creditor to resort for payment to the private property of the inhabitants. (*Horner* v. *Coffey*, 25 Miss. (3 Cush.) 434; see also *Beardsley* v. *Smith*, 16 Conn. 368.)

(*b*) The writ *may* (not must) be indorsed with a direction to the Sheriff to levy the amount by rate. The writ may also, it is apprehended, be indorsed, as in the case of writs of execution against individuals, either to levy of goods or lands (*or as the case may be*) of the Corporation, in which event a rate would not be contemplated, and probably would not be necessary. (See *Chicago* v. *Hasley*, 25 Ill. 595; see also *Beardsley* v. *Smith*, 16 Conn. 368; *Horner* v. *Coffey*, 25 Miss. 3 Cush. 434.)

(*c*) If the writ be indorsed by rate, the proceedings *shall* be as directed.

(*d*) The Sheriff is to deliver—

1. *A copy of the writ* and indorsement to the Chamberlain or Treasurer, *or* leave such copy at the office or dwelling-house of that officer.

2. *With a statement in writing* of the Sheriff's fees and of the amount required to satisfy such execution, including in such amount the interest calculated to some day as near as is convenient to the day of service.

The Sheriff is not entitled to poundage on writs of execution against Municipal Corporations, unless he actually make the money. (*Grant* v. *Hamilton*, 2 U. C. L. J. N. S. 262.) Where a settlement is obtained by means of the pressure of the Sheriff, he is entitled to be paid reasonable compensation for the services performed, although no special fee be assigned for such service in any statute or table of costs. (*Ib.*) If the Sheriff make the money, it would seem that he is entitled to poundage, though he may under this section have levied a rate to collect the amount. (*Ib.*)

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interest calculated to some day as near as is convenient to the day of the service;

If claim not paid, rate to be struck by sheriff.

(2.) In case the amount, with interest thereon from the day mentioned in the statement, be not paid to the Sheriff within one month after the service, the Sheriff shall examine the Assessment Rolls of the Corporation, and shall, in like manner as rates are struck for general Municipal purposes, strike a rate sufficient in the dollar to cover the amount due on the execution, (*e*) with such addition to the same as the Sheriff deems sufficient to cover the interest, his own fees and the Collector's percentage, up to the time when such rate will probably be available;

Sheriff's precept to collector, &c., to levy rate.

(3.) The Sheriff shall thereupon issue a precept or precepts, under his hand and seal of office, directed to the Collector or respective Collectors of the Corporation, and shall annex to every precept the roll of such rate, and shall by such precept, after reciting the writ, and that the Corporation had neglected to satisfy the same, and referring to the roll annexed to the precept, command the Collector or Collectors within their respective jurisdictions, (*f*) to levy such rate at the time and in the manner by law required in respect of the general annual rates;

Rate Rolls.

(4.) In case, at the time for levying the annual rates next after the receipt of such precept, the Collectors have a general rate roll delivered to them for such year, they shall add a column thereto, headed, "Execution rate in A. B. *vs.* The Township" (*or, as the case may be, adding a similar column*

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(*e*) It is the duty of the Sheriff to strike a rate "sufficient," &c. No provision exists for the striking of a second rate, in the event of the first proving insufficient. If the amount levied should be *more* than sufficient, provision is made for the disposition of the surplus. (Sub. 5.) It would appear to be necessary, where there are in the hands of the Sheriff at the same time several writs of execution against the same Corporation, to strike a rate for each particular writ. (See *Grant* v. *Hamilton*, 2 U. C. L. J. N. S. 262.)

(*f*) The *first* thing for the sheriff to do is, to deliver a copy of the writ, indorsement and statement, in the first sub-section mentioned.

The *second*, after the expiration of a month, to examine the Assessment Rolls of the Corporation and strike a rate, &c., as in the second subsection directed.

The *third*, to issue a precept such as in the subsection here annotated mentioned. If the Corporation withhold the Assessment Rolls from the Sheriff, his remedy would be to apply to the Court by mandamus, to compel them to submit the Rolls to him. (See *Grant* v. *Hamilton*, 2 U. C. L. J. N. S. 262.)

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*for each execution if more than one*), and shall insert therein the amount by such precept required to be levied upon each person respectively, and shall levy the amount of such execution rate as aforesaid, and shall, within the time they are by law required to make the returns of the general annual rate, return to the Sheriff (*g*) the precept with the amount levied thereon, after deducting their percentage;

(5.) The Sheriff shall, after satisfying the execution and all fees thereon, (*h*) pay any surplus, within ten days after receiving the same, to the Treasurer, for the general purposes of the Corporation. 29-30 V. c. 51, s. 224, sub. 1-5. Surplus.

**325.** The Clerk, Assessors and Collectors of the Corporation shall, for all purposes connected with carrying into effect, or permitting or assisting the Sheriff to carry into effect, the provisions of this Act with respect to such executions, be deemed to be officers of the Court out of which the writ issued, and as such shall be amenable to the Court, (*i*) and may be proceeded against by attachment, mandamus or otherwise, in order to compel them to perform the duties hereby imposed upon them. 29-30 V. c. 51, s. 224, sub. 6. Clerk, assessors and collectors to be officers of the court from which writ issues.

## Division VI.—Costs in Mandamus.

**326.** Upon any application for, or other proceedings upon, a writ of mandamus for or against a Municipal Corporation, the Courts may, in their discretion, (*k*) grant or refuse costs to either party. 29-30 V. c. 51, s. 223. Costs upon mandamus.

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(*g*) The duties of Collectors under this clause are the following:

1. To add a column to the general Roll, with the heading directed.

2. To insert therein the amount by the precept required to be levied.

3. To levy the amount of the execution rate.

4. To return to the Sheriff, within the time limited, the precept, with the amount levied, after deducting percentage.

(*h*) See note *d* to this section.

(*i*) This is a most important clause. The power of the Court over its officers is of a very summary nature. They may be punished by process of attachment for contempt in disobeying its rules or orders. (See 2 Chit., Archd. 1710, 12 Ed.)

(*k*) At Common Law, when a rule *nisi* for a mandamus is discharged, the Courts give costs or not to the person opposing it, according to their discretion, in each case. (*Kennedy* v. *Sandwich*, 9 U. C. Q. B. 326, 331.) The discretion is now expressly conferred "for or against" the Corporation by this section, which is a re-enactment of section 223 of the Municipal Institutions Act of 1866. In a case decided under the last mentioned Act, the Court said, "The

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DIVISION VII.—CONTRACTS VOID ALIKE IN EQUITY AND LAW.

Contracts by members with the Corporation to be void at law if void in equity.

**327.**—In case a member of the Council of any Municipality, either in his own name or in the name of another, and either alone or jointly with another, enters into a contract of any kind, or makes a purchase or sale in which the Corporation is a party interested, and which is on that account void or voidable in equity, (*l*) the same contract,

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rule should be discharged; but, as both parties have been wrong in the matter, it should be discharged without costs." (*In re Poussett and Lambton*, 22 U. C. Q. B. 86.) And, in a subsequent case, "We are not inclined to give costs to the Corporation, looking at the course they have taken, which has hitherto evaded or defeated the intended and, so far as appears, very proper design of the Board of School Trustees to discharge their duties." (*Per* Draper, C. J., in *School Trustees and Sandwich*, 23 U. C. Q. B. 643.) Where it was sought to compel a Corporation by mandamus to repair a public bridge, the mandamus *nisi* was discharged with costs, the Court saying, "The village of Cayuga, in adopting this remedy, did so avowedly upon the ground of being more speedy in its application than that of an indictment; and as they have chosen to try an experiment, I think the applicants must pay the costs." *Per* Burns, J., in *The Queen* v. *Haldimand*, 20 U. C. Q. B. 582.) In *Kinnear* v. *Haldimand* (30 U. C. Q. B. 398), the Court discharged a rule *nisi* for a similar purpose, with costs. But in *Westcott and Peterborough* (33 U. C. Q. B. 280), the same Court, in a similar case, for some reason which may be a good one but is not explained, refused to give the Corporation costs. (See further, note *l* to sec. 240, as to costs of applications to quash By-laws, which also are in the discretion of the Court.)

(*l*) The settled rule in equity is, that he who is entrusted with the business of others cannot be allowed to make such business an object of interest to himself. This rule does not depend on reasoning technical in its character or local in its application. It is founded upon principles of reason, of morality, and of public policy. It has its foundation in the very constitution of our nature, for it has authoritatively been declared that a man cannot serve two masters, and is recognized and enforced wherever a well regulated system of jurisprudence prevails. (*Per* the Chancellor, in *Toronto* v. *Bowes*, 4 Grant, 504.) One who has power, owing to the frailty of human nature, will be too readily seized with the inclination to use the opportunity for securing his own interest at the expense of that for which he is entrusted. (*York Building Society* v. *Mackenzie*, 8 Brown, P. C. 42.) The wise policy of the law has therefore put the sting of disability into the temptation as a defensive weapon against the strength of the danger which lies in the situation. This conflict of interest is the rock, for shunning which, the disability under consideration has obtained its force, by making that person who has the one part entrusted to him, incapable of acting on the other side, that he may not be seduced by temptation and opportunity from the duty of his trust. (*Ib.* 66.) The law will in no case permit persons who have undertaken a character or a charge, to change or invert that character by leaving it and acting for themselves in a business in

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purchase or sale shall also be held void in any action at law thereon against the Corporation. (*m*) 29-30 V. c. 51, s. 222.

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which their character binds them to act for others. (*Ib.*; see further, *Liquidators, &c.* v. *Coleman et al*, L. R. 6 H. L. C. 189.) The application of the rule may in some instances appear to bear hard upon individuals who had committed no moral wrong; but it is essential to the keeping of all parties filling a fiduciary character to their duty to preserve the rule in its integrity, and to apply it to every case as it arises, which justly falls within its principle. (*Per* Esten, V. C., in *Toronto* v. *Bowes*, 4 Grant, 530.) To deny the application of the rule to Municipal bodies, would be to deprive it of much of its value; for the well-working of the Municipal system, through which a large portion of the affairs of this country are administered, must depend very much upon the freedom from abuse with which they are conducted. It is obvious that nothing can more tend to correct the tendency to abuse, than to make abuses unprofitable to those who engage in them, and to have them stamped as abuses in Courts of Justice. (*Per* Esten, V. C., *Ib.* p. 531.) The tendency to abuse may indeed be in part corrected by public opinion; but public opinion itself is acted upon by the mode in which Courts deal with such abuses as are brought within their cognizance. It has been well observed that the view taken by Courts of Equity with respect to morality of conduct among all parties, is one of the highest morality; and this cannot fail to have a salutary effect upon public opinion itself. Just as, on the other hand, if a low standard of morality were presented by the Courts, its inevitable tendency would be the demoralization of the public feeling in regard to transactions of a questionable character. (*Ib.*) Where the Mayor of the City of Toronto secretly contracted to purchase, at a discount, a large amount of the debentures of the City, which were expected to be issued under a future By-law of the City Council, and was himself afterwards an active party in procuring and giving effect to the By-law which was subsequently passed, the Court of Chancery held him to be a trustee for the City of the profit he derived from the transaction (*Toronto* v. *Bowes*, 4 Grant, 489); which decision — Robinson, C. J., dissenting—was affirmed in appeal (6 Grant, 1), and afterwards upheld by the Privy Council. So where a member of a Municipal Corporation agreed with another party to take a contract from the Corporation for the execution of certain works in his name, the profits whereof were to be divided between the parties, it was held that such a contract was in contravention of the Municipal law, and the Court of Chancery refused to enforce the agreement for a partnership. (*Collins* v. *Swindle*, 6 Grant, 282.) A bill will lie, by some of the inhabitants of a Municipality alleging an illegal misapplication of Municipal funds by the Mayor, which the Council, though requested, refused to interfere with. (See *Paterson* v. *Bowes*, 4 Grant, 170.)

(*m*) In an action at law, the declaration alleged that defendant, as agent of the plaintiffs, undertook to expend certain moneys for them in certain roads and bridges; that he falsely and fraudulently represented to them that he had caused work to be done; and, in collusion with the persons alleged to have done the work, and by drawing false orders in their favour containing such representations, caused a certain sum to be drawn out of the plaintiffs' treasury, whereas



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DIVISION VIII.—POLICE OFFICE AND POLICE MAGISTRATE.

*Who to Preside in Police Office. Sec. 328.*
*Clerk of. Sec. 329.*
*Magistrate, Appointment and Salary of. Sec. 330, 331.*
*Tenure of Office. Sec. 332.*

Police offices in cities and towns.

**328.** The Council of every Town and City shall establish therein a Police Office; (*n*) and the Police Magistrate, or in his absence, or where or when there is no Police Magistrate, the Mayor of the Town or City shall attend at such police office daily, or at such times and for such period as may be necessary for the disposal of the business brought before him as a Justice of the Peace; but any Justice of the

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the work had not been done and the plaintiffs lost the money. Common money counts were added. It appeared at the trial that the Corporation, by a resolution, directed that $300 should be granted to each Councillor, defendant being one, to be expended on the roads; and, by another resolution, that $100 should be placed to the credit of each Councillor, to be expended by them on the roads and bridges in their respective divisions. This was in accordance with an established practice, by which the Councillors superintended the laying out of moneys in their respective divisions. Defendant granted several orders on the Treasurer to different persons for work alleged to be done, which orders were paid, and it afterwards appeared that the work, though contracted for, had not been done. There was no evidence of fraud or collusion on the part of the defendant, or any gain to himself, except a charge to the Corporation of commission on moneys expended. The jury found for the plaintiffs. The Court ordered a new trial, holding that the special count was not proved; that there could be no recovery on the common counts; and that it was doubtful if, in such a case, there could be any adequate remedy in a Court of Law. (*Chatham* v. *Houston*, 27 U. C. Q. B. 550.) Contracts such as the foregoing, between Corporations and members to act as Commissioners, Overseers or Superintendents, are now expressly authorized and legalized. (See sec. 372, sub. 2.)

(*n*) The duty to establish a Police Office for every Town and City is, by this section, apparently an imperative one. But the section must be read in connection with section 330, which shows that the duty is only imperative in Cities and Towns "having more than 5,000 inhabitants." *Other* towns may, if the Lieutenant-Governor sees fit, "have a Police Magistrate." (Sec. 331.) The persons who may preside at the Police Court are the Police Magistrate, Mayor, and any Justice of the Peace having jurisdiction in the Town or City:

1. The Police Magistrate, if able, daily, or at such times and for such period as may be necessary for the disposal of the business.

2. The Mayor, if no Police Magistrate, or in the absence of the Police Magistrate, is to perform similar duties.

3. Any Justice of the Peace having jurisdiction in the Town or City, at the request of the Mayor thereof.

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Peace having jurisdiction in a Town or City may, at the request of the Mayor thereof, act in his stead at the police office. (*p*) Except in cases of urgent necessity, no attendance is required on Sunday, Christmas Day, or Good Friday, or any day appointed by proclamation for a Public Fast, Thanksgiving or Holiday, or on any day set apart by the Council as a Civic Holiday. (*q*) *Vide* 29-30 V. c. 51, s. 367.

Clerk of police office and his duties.

**329.** The Clerk of the Council of every City or Town, or such other person as the Council of the City or Town may appoint for that purpose, shall be the Clerk of the Police Office thereof, and perform the same duties and receive the same emoluments as Clerks of Justices of the Peace; (*r*) and in case the said Clerk is paid by a fixed salary, the said emoluments shall be paid by them or him to the Municipality, and form part of its funds, and such Clerk shall be the officer of and under the Police Magistrate. (*s*) *Vide* 29-30 V. c. 51, s. 374.

Fees or salary.

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(*p*) No Justice of the Peace for a City or Town where there is a Police Magistrate, is empowered to act "in or for such City or Town, except in the case of the illness, absence, or at the request of the Police Magistrate." (Sec. 308.) This part of the section applies to the case of a Town or City where there is no Police Magistrate, and the Mayor is entitled to act as such. (Sec. 309.)

(*q*) The statute 29 Car. 2, cap. 7, s. 6, prohibits the execution of any process, warrant, &c., on the Lord's Day, except in cases of treason, felony, or breach of the peace. It is a matter of public policy that no proceedings of the nature described in the statute should be had on a Sunday, and that they cannot be made good by any assent or waiver by the party illegally arrested. (*The King* v. *Meyers*, 1 T. R. 265; *Re Ramsden*, 3 D. & L. 748; *Ex parte Egginton*, *Ib.* 754.) The statute authorizes arrest on a Sunday for *indictable* offences. (*Rawlins* v. *Ellis*, 16 M. & W. 172.) It is presumed that the Police or other Magistrate, whose attendance may be required on a holiday, is himself to judge whether the case be one of "urgent necessity," and attend or not as he may determine. Works of necessity and charity are exempted from the operation of the "Act to prevent the profanation of the Lord's Day in Upper Canada." (Con. Stat. U. C. cap. 104, s. 1.)

(*r*) The appointment of Police Clerks rests with the Municipal Councils. The Clerk of each Council is to act *ex officio* in the absence of any other appointment. Whether he acts *ex officio* or is appointed to act, if in the receipt of a fixed salary as Clerk of the Council, the fees appertaining to his office as Clerk, either of the Police or Recorder's Court, are to be paid by him to the Municipality and form part of its funds.

(*s*) Where a Municipal Council, in 1850, passed a vote assigning to the Clerk of the Peace a fixed salary "in lieu of all fees," and subsequently the Jury Act (13 & 14 Vic. cap. 55) was passed, it was held that the resolution would not debar him from claiming fees allowed by the statutes for preparing jury books for the following

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In what cases police magistrate to be appointed.

**330.** All Cities, and all Towns having more than five thousand inhabitants, shall have a Police Magistrate, (*t*) and the salaries of such Police Magistrate shall not be less than on the following scale, (*u*) and such salaries shall be paid half-yearly by the City and Town Municipalities respectively: (*v*)

Salaries of police magistrates in cities.

(1.) In Cities—Fourteen hundred dollars per annum; but any salary of a larger amount paid to any Police Magistrate at the time of the passing of this Act, shall be continued whilst such Police Magistrate remains in office;

In towns.

(2.) In Towns—Where the population is not more than six thousand, eight hundred dollars per annum; where the population is over six thousand and not more than eight thousand, one thousand dollars per annum; where the population is over eight thousand, twelve hundred dollars per annum. *Vide* 29-30 V. c. 52, s. 371; 31 V. c. 30, s. 39.

Police magistrates may be appointed in towns of not more than 5000 inhabitants, on certain conditions.

**331.** Every other Town (*a*) may, if the Governor in Council sees fit to make such an appointment, have a Police Magistrate, (*b*) but no such appointment shall in the first

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year. (*Pringle and Stormont, Dundas and Glengarry*, 10 U. C. Q. B. 254.) The Court said, "The Council may, in their discretion, revise their regulation of his salary in consequence of the change made in his duties, if they can insist upon his being paid a fixed salary; but it would be unreasonable and unjust to hold that he must be limited to his present salary, and receive nothing for doing the new duties. The Council cannot thus deprive him of the fees which a statute of the Province allows him." (*Per* Robinson, C.J., p. 255.)

(*t*) See note *n* to sec. 328.

(*u*) The scale is as follows:

In *Towns*—

| | | | |
|---|---|---|---|
| Population | *not more* than | 6,000 ..... | Salary $800 |
| " | *over* | 6,000 *not more* than 8,000 | " $1,000 |
| " | *over* | 8,000 ..... | " $1,200 |

In *Cities*—

Whatever the population ..... Salary $1,400

Any salary of a larger amount, paid to any Police Magistrate at the time of the passing of the Act, to be continued while *such* Police Magistrate remains in office.

(*v*) It is presumed, though not so expressed, that the salary is to be in lieu of all fees, the salary being the sole compensation fixed for the services performed. (See sec. 329, as to the Clerk of the Court.) A Police Magistrate can maintain an action of debt for his salary against the Municipal Corporation of which he was Police Magistrate. (*Wilkes* v. *Brantford*, 3 U. C. C. P. 470. But see *Addison* v. *Preston*, 12 C. B. 108.)

(*a*) See note *n* to sec. 328.

(*b*) It is in the discretion of the Lieutenant-Governor in Council to grant or refuse the request; but it cannot, in the first instance, be

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instance be made for a Town not having more than five thousand inhabitants, until two-thirds of the members of the Council do, in Council, pass a resolution affirming the expediency thereof; and the said Council may by such resolution fix the salary to be paid to such Police Magistrate; Provided always, that every Police Magistrate appointed before the passing of this Act in a Town with a less population than five thousand, shall not be affected by this section. *Vide* C. S. U. C. c. 54, ss. 369 & 374; 29-30 V. c. 51, s. 371; 37 V. c. 16, s. 9. Proviso.

**332.** Every Police Magistrate shall be appointed by the Governor, and shall hold office during pleasure. (*cc*) *Vide* 29-30 V. c. 51, s. 372. Tenure of office.

DIVISION IX.—BOARD OF COMMISSIONERS OF POLICE IN CITIES, AND POLICE FORCE IN CITIES AND TOWNS.

*Board, Members of.* Sec. 333.
*Quorum, who to be.* Sec. 334.
*May license Horses, Cabs, &c.* Sec. 335.
*By-laws of, how authenticated and proved.* Sec. 336.
*Infraction of, how punishable.* Sec. 337.
*High Bailiffs.* Sec. 338.
*Police Force.* Sec. 339.
*Appointment of.* Sec. 340.
*Regulations for.* Sec. 341, 342.
*Remuneration of.* Sec. 343.
*Constables in Towns where no Police Magistrate.* Sec. 344.
*Arrests without Warrant.* Sec. 345.
*Suspension from Office.* Sec. 346, 347.

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legally complied with in the case of a Town not having more than five thousand inhabitants, "until two-thirds of the members of the Council do, in Council, pass a resolution affirming the expediency thereof." In cases where the Lieutenant-Governor is empowered to appoint a Police Magistrate, it is presumed that he will not refuse a proper request to do so, inasmuch as the salary of the official, when appointed, is to be paid by the Municipality, and not by the Government. (See sec. 330.)

(*cc*) The appointment, it is presumed, is to be made in the name of the Queen, who is the universal officer and disposer of justice within the realm. (Bac. Ab. Offices, B.) But though all offices in relation to the administration of justice were originally and inherently lodged in the Crown, yet the Queen cannot grant these in any other manner than warranted by the statute or other authority creating them. (*Ib.* H.) Offices, in respect to their duration and continuance, are distinguished into those which are of inheritance, in fee, fee tail, freehold, for years, and during will and pleasure. (*Ib.*) The office of Police Magistrate is, by the section here annotated, held only "during pleasure." (See *Hammond* v. *McLay*, 28 U. C. Q. B. 463.)

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Board of commissioners of police in cities and towns; of whom composed.

**333.** In every City there is hereby constituted a Board of Commissioners of Police, and in every Town having a Police Magistrate, the Council may constitute a like Board, (*e*) and such Board shall consist of the Mayor, the Judge of the County Court of the County in which the City or Town is situate, and the Police Magistrate; and in case the office of County Judge or that of Police Magistrate be vacant, the Council of the City shall, and the Council of the Town may appoint a person resident therein to be a member of the Board, or two persons so resident to be members thereof, as the case may require, during such vacancy: (*f*) and such Commissioners shall have power to summon and examine witnesses on oath, (*g*) in all matters connected with the administration of their duties; (*h*) Provided always, that the Council of any such Town may at any time, by By-law, dissolve and put an end to the Board, and thereafter the Council shall have and exercise all the powers and duties previously had or exercised by the Board. 32 V. c. 6, s. 15; 37 V. c. 16, s. 10.

Powers as to witnesses.

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(*e*) Of late it has been deemed expedient to withdraw particular municipal functions from the Councils of certain Municipalities, and to vest such functions in Boards appointed wholly or in part independently of the people. It has been found that Councillors chosen by the people, and directly responsible to the people for their conduct, are not the best custodians of power to be exercised against some of the people for the welfare of the whole people. Matters of Police have for this reason been withdrawn and vested in a Board of Commissioners of Police, created as provided in this section.

(*f*) The intention is, that the Board, when full, shall consist of three persons, and that it shall at all times be full. The Board is made to consist of—

1. The Mayor.
2. The Judge of the County Court.
3. And the Police Magistrate.

The only qualification required of them is that they be residents of the Municipality. Two of the Board constitute a quorum. (Sec. 334.)

(*g*) This is an imperfect provision. The power is to "summon and examine witnesses on oath." But no provision is made for the compulsory attendance of witnesses, or for the punishment of refractory witnesses when in attendance. Had the provision been that the Commissioners should have "the same power to summon witnesses, enforce their attendance, and compel them to produce documents and to give evidence, as any Court has in civil cases" (see sec. 275); or that, for the purpose of the inquiry, the Board should "have all the powers of Commissioners under the Statute of Ontario respecting inquiries concerning public matters" (see sec. 370), the section would have been more complete.

(*h*) Their duties under this Act are—

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**334.** A majority of the Board shall constitute a quorum, and the acts of a majority shall be considered acts of the Board. (*i*) 29-30 V. c. 51, s. 395.

Majority to constitute a quorum.

**335.** The Board of Commissioners of Police shall in Cities regulate and license the owners of livery stables and of horses, cabs, carriages, omnibuses and other vehicles used for hire, (*k*) and shall establish the rates of fare to be taken

Licensing livery stables, cabs, &c.

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1. To regulate and license the owners of livery stables and of horses, cabs, carriages, omnibuses and other vehicles used for hire.

2. To establish the rates of fare to be taken.

3. To provide for enforcing payment of such rates. (See sec. 335.)

4. To appoint members of the Police Force. (Sec. 340.)

5. To make regulations for the government of the Force, &c. (Sec. 341.)

Besides, under Stat. 37 Vic. cap. 32, s. 9, they may pass By-laws—

1. For defining the conditions and qualifications requisite for granting tavern and other licenses for the sale of spirituous liquors, &c.

2. For declaring the terms and conditions required to be complied with by applicants.

3. For declaring the security to be given by applicant for a shop license.

4. For limiting the number of tavern and shop licenses, &c.

5. For exempting a limited number of persons from the necessity of having all the tavern accommodation required.

6. For regulating the houses or places to be licensed, &c.

7. For determining the sums to be paid, &c.

8. For appointing Inspectors of Licenses.

9. For defining the duties, remuneration, &c., of such Inspectors.

(*i*) No provision is made either for the appointment of Chairman—though a Chairman is intended (see sec. 336)—or for a casting vote in the event of a tie. (See *People* v. *Rector, &c.*, 48 Barb. 603.) Acts done when less than a legal quorum is present are void. (*Price* v. *Railroad Co.*, 13 Ind. 58; *Logansport* v. *Legg*, 20 Ind. 315; *Ferguson* v. *Chittenden County*, 1 Eng. (Ark.) 479; *McCracken* v. *San Francisco*, 16 Cal. 591; *Pimental* v. *San Francisco*, 21 Cal. 351; *Insurance Co.* v. *Sortwell*, 8 Allen, 217; see further, note *g* to sec. 120.)

(*k*) Power to a City Council to make such ordinances "respecting streets, carriages, waggons, carts, drays, &c.," as to them should seem expedient and necessary, was held to authorize an ordinance requiring all persons who drive for hire any cart, dray, waggon, or omnibus, within the City, to take out a license and to require the vehicle to be numbered, or on failure to do so to pay a fine. (*City Council* v. *Pepper*, 1 Rich. (S.C.) Law, 364; see further, *Bocking* v. *Jones*, L. R. 6 Q. B. 29.) Under a similar ordinance the imposition of an annual charge on each car of a street railway company was sustained. (*Frankford Railway Co.* v. *Philadelphia*, 58 Pa. St. 119; *Johnson* v. *Philadelphia*, 60 Pa. St. 445; but see *Mayor, &c.* v. *Avenue Railroad Co.*, 32 N. Y. 261.) The power is by this section restricted to vehicles "used for hire," and so clearly excludes any power to license vehicles used by merchants, manufacturers and others for

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by the owners or drivers, (*l*) and may provide for enforcing payment of such rates, (*m*) and for such purposes shall pass By-laws and enforce the same in the manner, and to the extent in which any By-law to be passed under the authority of this Act may be enforced. *Vide* 31 V. c. 30, s. 33; 32 V. c. 43, s. 22.

Shall make by-laws.

How such by-laws authenticated and proved.

**336.** All By-laws of such Board of Commissioners of Police shall be sufficiently authenticated by being signed by the Chairman of the Board who shall pass the same; (*n*) and a copy of any such By-law, written or printed, and certified to be a true copy by any member of such Board,

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their own use. (*St. Louis* v. *Grove*, 46 Mo. 574.) In England, by Stat. 6 & 7 Vic. cap. 86, s. 33, provision is made for licensing hacks, and a penalty is imposed on the driver of a hackney coach who shall apply for hire elsewhere than at some standing appointed for the purpose. The following cases have been decided under that statute: *Hurrell* v. *Ellis*, 2 C. B. 295; *Rogers* v. *MacNamara*, 14 C. B. 27; *Heath* v. *Brewer*, 15 C. B. N. S. 803; *Ex parte Mitcham*, 5 B. & S. 585; *Buckle* v. *Wrightson*, *Ib.* 854; *Skinner* v. *Usher*, L. R. 7 Q. B. 423; *Fowler* v. *Lock*, L. R. 7 C. P. 272. Such regulations are made under the Metropolitan Public Carriage Act, 32 & 33 Vic. cap. 115, s. 4, regulating vehicles plying for hire. The following cases have been decided under it: *Clarke* v. *Stanford*, L. R. 6 Q. B. 357; *Allen* v. *Tunbridge*, L. R. 6 C. P. 481; *Bocking* v. *Jones*, L. R. 6 Q. B. 29; see also *Duck* v. *Addington*, 4 T. R. 447; *The King* v. *Rawlinson*, 6 B. & C. 23; *Cloud* v. *Turfery*, 2 Bing. 318; *Blackpool* v. *Bennett*, 4 H. & N. 127; decided under other similar Acts in England.

(*l*) The power "to *regulate* and license" vehicles used for hire would involve the power to establish the rates of fare to be taken by the owners or drivers, as well as the power to make it obligatory upon such owners or drivers to carry the tariff printed in some conspicuous place, for the use of those who employ the vehicles. The Legislature has not left the former part of the proposition open to mere inference.

(*m*) It is intended that the provision for enforcing payment of rates, &c., shall be by By-law. For all the purposes mentioned in the section, the Commissioners are empowered "to pass By-laws and enforce the same in the manner and to the extent in which any By-law to be passed under the authority of this Act may be enforced." The usual mode of enforcing the provisions of a By-law is by fine, to be levied by distress; and in default, by imprisonment. (See sec. 315, and notes thereto.) Express provision to that effect is made in sec. 337.

(*n*) The ordinary mode of authenticating an ordinary Municipal By-law, is to have it under the corporate seal of the Corporation and the signature of the head of the Corporation. (Sec. 226.) Commissioners of Police are not a Corporation, and therefore have no corporate seal; so that their By-laws are to be deemed sufficiently authenticated "by being signed by the Chairman of the Board who shall pass the same."

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shall be deemed authentic, and be received in evidence in any Court of Justice without proof of any such signature, unless it is specially pleaded or alleged that the signature to any such original By-law has been forged. (*o*) 32 V. c. 32, s. 39.

May be enforced by penalties, &c.

**337.** In all cases where the Board of Commissioners of Police are authorized to make By-laws, either under this or any other Act or law, they shall have power in and by such By-laws to attach penalties for the infraction thereof, (*oo*) to be recovered and enforced by summary proceedings before the Police Magistrate of the City for which the same may be passed, or, in his absence, before any Justice of the Peace having jurisdiction therein, in the manner and to the extent that By-laws of City Councils may be enforced under the authority of this Act; (*p*) and the convictions in such proceedings may be in the form herein set forth. (*q*) 32 V. c. 32, s. 38.

How recovered.

High bailiffs.

**338.** The Council of every City shall appoint (*r*) a High Bailiff, (*s*) but may provide by By-law that the offices of High Bailiff and Chief Constable shall be held by the same person. 29-30 V. c. 51, s. 389.

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(*o*) This is in effect a transcript of a similar provision made as to the admission in evidence of ordinary Municipal By-laws. (See sec. 227, and notes thereto.)

(*oo*) See sec. 315, and notes thereto.)

(*p*) See sec. 308 *et seq.*

(*q*) See note *h* to sec. 238.

(*r*) The appointment of High Bailiff rests with the Municipal Council, whereas the appointment of Constables rests with the Board of Police Commissioners. (Sec. 340.)

(*s*) A Constable is an officer of great antiquity. (Bác. Ab. Constable, A.) The office was originally instituted for the better preservation of the peace. (*Ib.* C.) A Constable is the proper officer to a Justice of the Peace, and so is bound to execute warrants. (*Ib.* D.) If a Constable be sued for anything done in the execution of his office, he and all who assist him may plead the general issue, and give the special matter in evidence. (*Ib.*) There may be one or more Constables for each Ward of a City or Town (sec. 344), or as many Constables or other officers and assistants as the Council may deem necessary. (Sec. 339.) The Chief Constable is the Constable appointed to have precedence over other Constables, and to superintend and control them. (*Ib.*) His duties usually differ from those of the High Bailiff. The latter is, as it were, Sheriff of the City; and yet it has been held that it is the duty of the Sheriff of the County in which the City is situate, and not of the High Bailiff of the City, to convey to the Penitentiary prisoners sentenced at the Recorder's Court. (*Glass* v. *Wigmore*, 21 U. C. Q. B. 37.) Every City must,

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Police force in cities and towns.

**339.** The Police Force in Cities and Towns having a Board of Commissioners of Police shall consist of a Chief Constable and as many Constables and other officers and assistants as the Council from time to time deem necessary, (*ss*) but in Cities not less in number than the Board reports

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under the section here annotated, appoint a High Bailiff, and may by By-law direct that the offices of High Bailiff and Chief Constable shall be held by the same person. The Council may suspend the High Bailiff from the duties of his office. (Sec. 346.) Police officers "are not necessarily Constables or conservators of the peace." (See the following note.)

(*ss*) This section relates to the constitution and number of the Force. It is to consist of a Chief Constable and as many Constables and *other* officers and assistants as the *Council* from time to time deem necessary; but in Cities in no case to be less in number than the Board reports to be absolutely required. The only authority of the Council is, subject to the provisions of the section, to fix the number of the Force, but not to appoint the members of the Force. (See sec. 340.) The Police Force is a force not known to the common law; Police Officer is an officer not known to the common law. It is created by statute. Being so created, such an officer can only exercise such power as the statute confers on him, either by express authority or necessary inference. (See *Commonwealth* v. *Hastings*, 9 Metc. 259; *Commonwealth* v. *Dugan*, 12 Metc. 233.) In Massachusetts, Police Officers are made Peace Officers. (See *Buttrick* v. *Lowell*, 1 Allen, 172.) So also in Maine. (See *Mitchell* v. *Rockland*, 52 Maine, 118; s. c. 41 Maine, 363, and 45 Maine, 504.) It is by section 342 of this Act enacted that Constables (apparently meaning Policemen under this Act) shall be charged with the special duties of preserving the peace, preventing robberies and other felonies and misdemeanors, and apprehending offenders; and shall have "generally all the powers and privileges, and be liable to all the duties and responsibilities which belong *by law to Constables duly appointed.*" Where Police Officers are by statute invested with the powers of Peace Officers, or conservators of the peace, they have power to arrest certain offenders on view. (Bac. Ab. Constable, C.; 1 Hale, P. C. 587; *Taylor* v. *Strong*, 3 Wend. 384; *Commonwealth* v. *Hastings*, 9 Metc. 259; *Bryan* v. *Bates* 15 Ill. 87; *Main* v. *McCarty*, *Ib.* 441; *Lafferty* v. *State*, 5 Harring. (Del.) 491.) A Constable may *on view* arrest persons engaged in a breach of the peace. (*City Council* v. *Payne*, 2 Nott. & McCord, S. C. 475; *White* v. *Kent*, 11 Ohio, St. 550; *Thomas* v. *Ashland*, 12 Ohio, St. 127.) Every person, *as well as Constables*, present when a *felony* is committed or a dangerous wound given, not only may apprehend the offender, but is bound to do so. (*Beckwith* v. *Philby*, 6 B. & C. 634; *Mathews* v. *Biddulph*, 3 M. & G. 390; 2 Hawk. cap. 12, sec. 1; 1 East. P. C. 377, sec. 1.) If a private person be present at an affray, he may stay the affrayers until the heat is over, and then deliver them over to a Constable, and he may stop others coming to join either party. (*Timothy* v. *Simpson*, 1 C. M. & R. 757; *Ingle* v. *Bell*, 1 M. & W. 516; 2 Hawk. cap. 13, sec. 8; *Baynes* v. *Brewster*, 2 Q. B. 375.) So a private person may arrest after an affray, if there be reasonable ground to apprehend a renewal of it. (*Price* v. *Seely*, 10 Cl. & Fin. 28.) Any person may

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to be absolutely required. 29-30 V. c. 51, s. 396; 37 Vic. c. 16, s. 11.

**340.** The members of such Police Force shall be appointed

Appointment of members thereof.

arrest any other person found committing any indictable offence in the night. (32 & 33 Vic. cap. 29, s. 4.) Any Peace Officer may, without a warrant, take into custody any person whom he finds lying or loitering in any highway, yard, or other place during the night, and whom he has good cause to suspect of having committed or being about to commit any felony. (*Ib.* s. 5.) Any person found committing an indictable offence, punishable either by indictment or upon summary conviction, may be immediately arrested by any Peace Officer, without a warrant, or by the owner of the property on or with respect to which it is being committed, or by his servant, or by any other person authorized by the owner. (*Ib.* s. 2.) If any person to whom any property is offered to be sold, pawned or delivered, has reasonable cause to suspect that any such offence has been committed on or with respect to such property, he may arrest the offender. (*Ib.* s. 3.) It is not suspecting that gives the right to arrest, but good reason or good cause to suspect, and the reason or cause would appear to be traversable. (See *The Queen* v. *Tooley et al*, 11 Mod. 242, 248; s. c. Ld. Rayd. 1296, 1301.) In ordinary cases, to justify an arrest by a Police Officer even for a misdemeanor, it is necessary that he should have the warrant with him at the time. (*The Queen* v. *Chapman*, 12 Cox, C. C. 4.) It is no part of a Police Constable's duty as such to assist the occupier of a house in putting out an intruder (*The Queen* v. *Roxburgh*, 12 Cox, C. C. 8), yet he may lawfully do so. (*Ib.*) If a private individual state facts to a Constable, who thereupon, upon his own responsibility, arrests a person, or if he procure a Magistrate to issue a warrant for taking a person, the imprisonment is not his act, and he may show this under the plea of not guilty. (*Barber* v. *Rollinson*, 1 C. & M. 330; *Stonehouse* v. *Elliott*, 6 T. R. 315; *Brandt* v. *Craddock*, 27 L. J. Ex. 314; *Grinham* v. *Willey*, 4 H. & N. 496.) A Constable is justified in arresting without a warrant upon a reasonable suspicion of a *felony* having been committed and of the person being guilty of it, although no felony has in fact been committed, and whether the reasonable grounds for suspicion are matters within his own knowledge or facts stated to him by another. (*Lawrence* v *Hedger*, 3 Taunt. 14; *Davis* v. *Russell*, 5 Bing. 355; *Beckwith* v. *Philby*, 6 B. & C. 635; *Hogg* v. *Ward*, 3 H. & N. 417.) But a Constable is not in general justified in arresting a person who frequents a highway with intent to commit a felony (*Re Timson*, L. R. 5 Ex. 257; see also *In re Jones*, 7 Ex. 586), or in arresting a person for a *misdemeanor* without a warrant (*Mathews* v. *Biddulph*, 3 M. & G. 390; *Griffin* v. *Coleman*, 4 H. & N. 265; see sec. 345), unless there be a breach of the peace in his presence (*Timothy* v. *Simpson*, 1 C. M. & R. 757; *Derecourt* v. *Corbishley*, 5 El. & B. 188), or danger of a renewal of it. (*The Queen* v. *Light*, 27 L. J. Mag. Cas. 1; *The Queen* v. *Walker*, 23 L. J. Mag. Cas. 123; see also, *Pesterfield* v. *Vickers*, 3 Coldw. (Tenn.) 205; see further, secs. 345 and 369 of this Act, and notes thereto.) It would seem that a Constable, having a warrant to arrest, is not bound to accept a tender of the fine and costs. See *Arnott* v, *Bradley*, 23 U. C. C. P. 1.)

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by and hold their offices at the pleasure of the Board, (*t*) and shall take and subscribe to the following oath : (*u*)

Oath of Office.

I, *A. B.*, do swear that I will well and truly serve our Sovereign Lady the Queen in the office of Police Constable for the of without favour or affection, malice or illwill ; and that I will, to the best of my power, cause the peace to be kept and preserved, and will prevent all offences against the persons and properties of Her Majesty's subjects ; and that while I continue to hold the said office, I will, to the best of my skill and knowledge, discharge all the duties thereof faithfully according to law." 29-30 V. c. 51, s. 397 ; 31 V. c. 30, s. 41.

Board to make police regulations.

**341.** The Board shall, from time to time, make such regulations as they may deem expedient for the government of the Force, (*uu*) and for preventing neglect or abuse, and for rendering the Force efficient in the discharge of all its duties. 29-30 V. c. 51, s. 398.

Constables to be subject to the board.

**342.** The Constables (*a*) shall obey all lawful directions,

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(*t*) The power to appoint members of the Police Force, unlike that for the appointment of the High Bailiff, is vested in the Board of Police Commissioners. The power to appoint involves the power to remove, so it is declared that the members of the Force shall "hold their offices at the pleasure of the Board." It was at one time held that the Board had no power to fix the salaries or remuneration of the members of the Force (*In re Prince and Toronto*, 25 U. C. Q. B. 175), but the law is now altered. (See sec. 343.) The members of the Force are in all things made subject to the government of the Board. (See secs. 341 and 342.) Until the organization of the Board they may be suspended by the Police Magistrate or Mayor. (Sec. 346.)

(*u*) The taking of the oath is obligatory, and it must not only be taken but subscribed. An assault upon a Constable in the discharge of his duty would seem to be indictable, although he never took the oath of office. (*Buttrick* v. *Lowell*, 1 Allen, 172; *Mitchell* v. *Rockland*, 52 Maine, 118.)

(*uu*) The object of Police regulations is to render "the Force efficient in the discharge of all its duties." Power to the Board from time to time to make such regulations "as they may deem expedient for the *government* of the Force," involves the power to make regulations to secure efficiency ; and such ought to be the regulations, unless the Board "deem it expedient" that the Force should not be efficient in the discharge of its duties. So power to make regulations for the efficiency of the Force involves power to make regulations against "neglect" and "abuse." Much of this section is needless : the first part of it involves the second, and the second is therefore unnecessary.

(*a*) "The Constables." By this is meant the members of the Police Force, authorized by section 339, and appointed under section

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and be subject to the government of the Board, (*b*) and shall be charged with the special duties of preserving the peace, preventing robberies and other felonies and misdemeanors, and apprehending offenders, and shall have generally all the powers and privileges, and be liable to all the duties and responsibilities which belong by law to Constables duly appointed. (*c*) 29-30 V. c. 51, s. 399. Duties of.

**343.** The Council shall appropriate and pay such remuneration for and to the respective members of the Force as shall be required by the Board of Commissioners of Police, and shall provide and pay for all such offices, watch-houses, watch-boxes, arms, accoutrements, clothing and other necessaries, as the Board may from time to time deem requisite, (*d*) and require for the payment, accommodation and use of the Force. (*e*) 29-30 V. c. 51, s. 400. Remuneration and contingent expenses.

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340 of this Act. By the former section it is provided that "the Police Force" in Cities and Towns having a Police Magistrate shall consist of "a Chief Constable and as many Constables and other officers and assistants," as the Council from time to time deems necessary. There *may* be a wide difference between "a Police Officer" and "a Constable" (see note *s* to sec. 338); but under the operation of the section here annotated there can be little, for it is especially declared, among other things, that the Constables shall have generally all the powers which "belong by law" to Constables duly appointed.

(*b*) See note *uu* to sec. 341.

(*c*) See note *ss* to sec. 339.

(*d*) If the Council wholly neglect and refuse to appropriate or pay, as required by the Board of Commissioners of Police, for the purposes mentioned, there would be a remedy. (See *In re Board of School Trustees of Toronto*, 23 U. C. Q. B. 203.) The Council is not bound to follow the dictation of the Board as to the manner of procuring the money. (*Ib.*) It may be that the Council has surplus funds in hand to meet demands without levying a rate. If so, the levying of a rate, even though asked by the Board, would be unnecessary. (See *School Trustees and Galt*, 13 U. C. Q. B. 511, 521.) Formerly the Board of Commissioners had not power to fix the remuneration, and when the law was so the Court refused to interfere to compel the Council to pay the remuneration fixed by the Board. (*In re Prince and Toronto*, 25 U. C. Q. B. 175.)

(*e*) The three heads are—

1. Payment of the Force.
2. Accommodation of the Force.
3. Use of the Force.

It would only be proper for the Board to furnish to the City Council some details of the proposed expenditure, showing that it will come under one or other of these heads. (See *In re Trustees of*

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Constables in towns not having police magistrate.

**344.** The Council of every Town not having a Police Magistrate, (*f*) shall appoint one Chief Constable and one or more Constables for the Municipality, (*g*) and the persons so appointed shall hold office during the pleasure of the Council. (*h*) 29-30 V. c. 51, s. 390.

Arrest by constables for alleged breaches of the peace not committed in their presence.

**345.** In case any person complains to a Chief of Police, or to a Constable in a Town or City, of a breach of the peace having been committed, (*i*) and in case such officer has reason to believe that a breach of the peace has been committed, though not in his presence, and that there is good reason to apprehend that the arrest of the person charged with com-

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*Brockville*, 9 U. C. Q. B. 302; *In re Trustees of Port Hope*, 4 U. C. C. P. 418; *In re Schools* v. *Toronto*, 20 U. C. Q. B. 302; *Ib.* 23 U. C. Q. B. 203; *In re Coleman* v. *Kerr*, 27 U. C. Q. B. 5; *In re School Trustees of Mount Forest* v. *Mount Forest*, 29 U. C. Q. B. 422.) But it is to be noted that no provision is here made in express terms for the giving of an estimate to the Corporation. (See *In re Port Rowan High School* v. *Walsingham*, 23 U. C. C. P. 11.) The Court, on a motion for a mandamus, is not bound to consider objections, well or ill founded, to certain items in the estimate of the Board. An objection to particular items can form no reason for withholding, arbitrarily and without explanation, every part of an estimate. A different course would have to be taken to raise such an objection. (*School Trustees* v. *Toronto*, 23 U. C. Q. B. 205.)

(*f*) See note *n* to sec. 328.

(*g*) See note *ss* to sec. 339.

(*h*) See note *t* to sec. 340.

(*i*) The object of this section is to remove doubts as to the authority of the peace officers named to make arrests without warrant for *misdemeanors* not committed within their view. (See note *ss* to sec. 339.) Caution must, however, be exercised in making arrests under such circumstances. A Magistrate's warrant is a great shield. Where an arrest is made without it, if it should turn out that the provisions of this section have been neglected, that the wrong person is arrested, or that proof is so slight that he is of necessity discharged, the officer might be held liable to an action for false imprisonment. To authorize an arrest without warrant under this section, the following things must concur:

1. There must be a complaint to the officer of a breach of the peace having been committed.
2. The officer must "have reason to believe" that a breach of the peace has been committed; and,
3. That there is good reason to apprehend that the arrest of the person charged is necessary to prevent his escape, or to prevent a renewal of the breach of the peace, &c.
4. Satisfactory security to prosecute must be given to the officer.

Statutes authorizing Police Officers to make arrests without warrant, being in derogation of personal liberty, should be strictly construed. (*Low* v. *Evans*, 16 Ind. 486; *Pow* v. *Beckner*, 3 Ind. 475; *Vandeveer* v. *Mattocks*, *Ib.* 479.)

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mitting the same is necessary to prevent his escape or to prevent a renewal of the breach of the peace, or to prevent immediate violence to person or property, then if the person complaining gives satisfactory security to the officer that he will without delay appear and prosecute the charge before the Police Magistrate or before the Mayor or sitting Justice, such officer may, without warrant, arrest the person charged, in order to his being conveyed, as soon as conveniently may be, before the Magistrate, Mayor or Justice, to be dealt with according to law. 29-30 V. c. 51, s. 391.

Until a board of police is organized, mayor, &c., may suspend chief constable, &c., from office, &c.

**346.** Until the organization of a Board of Police, every Mayor or Police Magistrate may, within his jurisdiction, suspend from office, for any period in his discretion, the Chief Constable, or Constable of the Town or City, and may, if he chooses, appoint some other person to the office during such period; (*k*) and in case he considers the suspended officer deserving of dismissal, he shall, immediately after suspending him, report the case to the Council, and the Council may dismiss such officer, or may direct him to be restored to his office after the period of his suspension has expired; (*l*) and the City Council respectively shall have the like powers as to the High Bailiff of a City. (*m*) 29-30 V. c. 51, s. 392.

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(*k*) The powers of the Mayor or Police Magistrate, under this section, are—

1. To suspend from office, for any period in his discretion, the Chief Constable or Constable of the Town or City.

2. To appoint, if he choose, some other person to the office during the period of suspension.

3. To report, if he considers the suspended officer deserving of dismissal, the case to the Council.

But has of himself no power to dismiss—that rests with the Council. And these powers are only to be exercised "until the organization of a Board of Police."

(*l*) During the suspension the suspended officer is incapable of acting in his office except by the written permission of the Mayor or Police Magistrate who suspended him, and is deprived during that period of all salary or remuneration. (Sec. 347.) The restoration to office is only to take place "after" the period of his suspension has expired. If a person be illegally suspended from the duties of his office, it may be that a mandamus will lie for his restoration, *sed qu.* when the office is one during pleasure. (See *The King* v. *Barker*, 3 Burr. 1266; Willcocks' Municipal Corporations, 368, pl. 74, 75; *Ib.* 377, pl. 96; Angell & Ames on Corporations, ss. 702 & 706; 3 Bl. Com. 110.)

(*m*) The power of appointment of the High Bailiff is vested in the Council of the City, (Sec. 338.) The power of suspension from duty is therefore properly vested, by this section, in the same body.

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Incapacity of such officer to act.

Salary to cease.

**347.** During the suspension of such officer he shall not be capable of acting in his office, except by the written permission of the Mayor or Police Magistrate who suspended him, (*n*) nor during such suspension shall he be entitled to any salary or remuneration. (*o*) 29-30 V. c. 51, s. 393.

DIVISION X.—COURT HOUSES, GAOLS AND OTHER PLACES OF IMPRISONMENT.

*Erection and care of.* *Sec. 348–366.*
*Who to be confined in, and Expense of Prisoners.* *Sec. 357, 367–369.*

County Council may pass by-laws as to county buildings.

**348.** Every County Council may pass By-laws for erecting, improving or repairing a Court House, Gaol, House of Correction, and House of Industry, (*a*) upon land being the property of the Municipality, and shall preserve and keep the same in repair, and provide the food, fuel and other supplies required for the same. 29-30 V. c. 51, s. 401.

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(*n*) See note *k* to sec. 346.

(*o*) When restored, his restoration can only take effect "after the period of his suspension has expired." The suspension is therefore a deprivation of office for some certain period. During that period another may be appointed to the office. (See sec. 346.) That other, if appointed, would, in the absence of agreement to the contrary, be entitled to the salary or remuneration.

(*a*) The powers and duties of the County Council under this section are—

1. To erect and improve a Court House, Gaol, House of Correction, and House of Industry, upon land being the property of the Municipality.

2. To preserve and keep the same in repair.

3. To provide the food, fuel and other supplies required for the same.

The Court House, from its very name as well as from the provisions of law requiring the erection of a Gaol and Court House in every County or Union of Counties before they are constituted separate Municipal authorities, is a building devoted to and intended for certain public uses. The Municipal Corporation may be considered as holding the building and the legal estate in it, for and subject to these uses, and would be guilty of a breach of trust and, as regards the Courts of Justice, of a high contempt, if they pretended to prevent its use for such purposes. (*Per* Draper, C.J., in *Huron and Bruce* v. *Macdonald et al*, 7 U. C. C. P. 280.) Gaols have always been considered of such universal concern to the public, that until powers were conferred upon Municipal Corporations to erect them, none could be erected except by authority of Parliament. (*The King* v. *Newcastle*, Dra. Rep. 214; see also *The Queen* v. *Lancashire*, 11 A. & E. 144.) But now, where a Municipal Corporation, having power, authorizes the building of a Gaol and Court House, the builder

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**349.** The Gaol, Court House and House of Correction of the County in which a Town or City, not separated for all purposes from a County, (*b*) is situate, shall also be the Gaol, Court House and House of Correction of the Town or City, and shall, in the case of such City, continue to be so until the Council of the City otherwise directs; (*c*) and the Sheriff, Gaoler and Keeper of the Gaol and House of Correction shall receive and safely keep, until duly discharged, all persons committed thereto by any competent authority of the Town or City. (*d*) 29-30 V. c. 51, s. 402.

Gaols and court houses in counties and cities, &c., not separated.

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may, on the completion of the work, sue the Corporation for his money (*Keating* v. *Simcoe*, 1 U. C. Q. B. 28), even though there be no contract under seal. (*Pim* v. *Ontario*, 9 U. C. C. P. 302, 304.) The Corporation, however, is not liable to be sued for the use and occupation of a room engaged by the Sheriff for the purposes of a Court room (*Dark* v. *Huron and Bruce*, 7 U. C. C. P. 378), nor for furniture supplied to the Court House on the order of Magistrates in Quarter Sessions. (*In re Coombs and Middlesex*, 15 U. C. Q. B. 367.) The fact that the Court House is also used as a Shire Hall for the sittings of the County Council, and the furniture made use of by them, can make no difference. (*Ib.*) Formerly, the responsibility of keeping the Court House in repair was thrown on the District Surveyor; and when the law was so, it was held that the Municipal Corporation was not liable in damages for an injury resulting in death, occasioned to an individual in walking up the Court House steps, which had been allowed to fall into an unsafe condition. (*Hawkeshaw* v. *Dalhousie*, 7 U. C. Q. B. 590.) The Court has refused a rule for a mandamus to compel a County Council to build a Court House. (*Justices of the District of Huron* v. *Huron District Council*, 5 U. C. Q. B. 574.) In case the Inspector of Prisons shall at any time find that the Common Gaol in any County or City is out of repair, or has become unsafe or unfit for the confinement of prisoners, or that the same does not afford sufficient space or room for the prisoners usually confined therein, the County may now be compelled by mandamus to make the necessary repairs. (31 Vic. cap. 21, ss. 15, 16, Ont.) A similar provision might, with advantage to the public, be enacted as to Court Houses. The Legislature has not as yet shown as much concern for the health of Judges as of prisoners. (See note *d* to sec. 359.)

(*b*) Where a City or Town is separated for *all* purposes from the County in which situate, this section would be inapplicable.

(*c*) It is declared, first, that the Gaol, &c., of the County in which a Town or City is situate, shall also be the Gaol, &c., of the Town or City; and, secondly, in the case of a *City*, continue to be so until the Council of the City otherwise directs. It is apparently only the Council of a City, and not of a Town, that has power to direct the erection of a separate gaol, &c. (See sec. 350.)

(*d*) If the committal be for a certain time, unless a fine and costs or a fine or costs be sooner paid, the Sheriff, Gaoler or Keeper to whom the warrant is directed should be careful not to detain the



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City councils may erect, &c., certain public buildings.

**350.** The Council of every City may erect, preserve, improve and provide for the proper keeping of a Court House, Gaol, House of Correction and House of Industry upon lands being the property of the Municipality, (*e*) and may pass By-laws for all or any of such purposes. (*f*) 29-30 V. c. 51, s. 405.

Lock-up houses may be established by county council.

**351.** The Council of every County may establish and maintain a Lock-up House or Lock-up Houses within the County, (*g*) and may establish and provide for the salary or fees to be paid to the Constable to be placed in charge of every such Lock-up House, and may direct the payment of the salary out of the funds of the County. 29-30 V. c. 51, s. 407.

A constable to be placed in charge of.

**352.** Every Lock-up House shall be placed in the charge of a Constable specially appointed for that purpose, (*h*) by the Magistrates of the County at a General Sessions of the Peace therefor. 29-30 V. c. 51, s. 408.

Lock-up houses.

**353.** The Council of every City, Township, Town, and Incorporated Village (*i*) may, by By-laws, establish, maintain

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prisoner after payment or tender of the money. (See *Smith* v. *Sibson*, 1 Wils. 153; *Chaddock* v. *Wilbraham*, 5 C. B. 645, 650; and *Walsh* v. *Southworth et al*, 6 Ex. 150.)

(*e*) The Gaol, Court-house and House of Correction of the County in which a City is situate is to be the Gaol, Court House and House of Correction of the City, till the latter Municipality otherwise direct.

(*f*) See sec. 349; also note *a* to sec. 348.

(*g*) The powers are—

1. To establish and maintain a Lock-up House or Lock-up Houses within the County;

2. To establish and provide for the salary or fees to be paid to the Constable in charge;

3. To direct the payment of the salary out of the County funds.

A "Lock-up House" is a place for the temporary confinement of a prisoner, or of a prisoner committed for a short space of time. (Sec. 367.) The Gaol is for the whole County, but in each County or Union of Counties there can be only one Gaol, and that situate in the County Town. But there may be several Lock-up Houses, and situate where most convenient. Councils of *Counties* only are by this section authorized to establish Lock-up Houses. (See secs. 353, 354, as to Cities, Townships, Towns and Incorporated Villages.)

(*h*) While the Gaol is to be placed in care of the Sheriff (sec. 358), each Lock-up House is to be placed in charge of a Constable *specially* appointed for that purpose by Quarter Sessions. Such Constables may be paid either by salary or fees. (Sec. 351.)

(*i*) Counties have the power under a different section. (Sec. 351.)

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and regulate Lock-up Houses for the detention and imprisonment of persons sentenced to imprisonment for not more than ten days under any By-law of the Council; and of persons detained for examination on a charge of having committed any offence; and of persons detained for transmission to any Common Gaol or House of Correction, either for trial or in the execution of any sentence; (*k*) and such Councils shall have all the powers and authorities conferred on County Councils in relation to Lock-up Houses. (*l*) 29-30 V. c. 51, s. 412.

Joint lock-up houses.

**354.** Two or more Municipalities may unite to establish and maintain a Lock-up House. (*m*) 29-30 V. c. 51, s. 412.

Land may be acquired for industrial farms, house of industry, refuge, &c.

**355.** The Council of every County, City, or Town separated from a County may acquire an estate in landed property for an Industrial Farm, and may establish a House of Industry and a House of Refuge, and provide by By-law for the erection and repair thereof, and for the appointment, payment and duties of Inspectors, Keepers, Matrons and other servants for the superintendence, care and management of such Houses of Industry or Refuge, and in like manner make rules and regulations (not repugnant to law) for the government of the same; (*n*) Provided always, that

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(*k*) The persons who may, under the operations of this section, be confined in Lock-up Houses are the following:

1. Those *sentenced* to imprisonment for not more than ten days, under any By-law of the Council;

2. Those *detained* for examination on the charge of having committed any offence;

3. Those *detained* for transmission to the Common Gaol or House of Correction.

See further, sec. 367.

In none of the cases mentioned should the detainer in the Lock-up of persons other than those mentioned be longer than mentioned, or for any other purpose than mentioned. Excess in any of these particulars may subject the persons concerned to an action of trespass. (See *Atkins* v. *Kilby*, 11 A. & E. 777.)

(*l*) See sec. 351 and notes thereto.

(*m*) The power to unite in establishing and maintaining a Lock-up House, it is apprehended, includes the power to make a valid agreement as to the terms which each shall contribute towards its establishment and maintenance. The Keeper of a County Lock-up may be paid either by salary or fees. (See note *g* to sec. 351.)

(*n*) The powers under this section are—

1. To establish a House of Industry and House of Refuge;

2. To provide by By-law for the erection and repair thereof;

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Proviso, as to united or contiguous counties.

any two or more United Counties, or any two or more contiguous Counties, or any City and one or more Counties, or any Town or one or more Counties, may agree to have only one House of Industry or Refuge for such United or contiguous Counties, or City and Counties, or Town and Counties, and maintain and keep up the same in the manner herein provided. (*o*) *Vide* 29-30 V. c. 51, s. 413; 31 V. c 30, s. 42.

Inspectors to keep and render accounts of expenses, &c.

**356.** The Inspector shall keep an account of the charges of erecting, keeping, upholding and maintaining the House of Industry or Refuge, and of all materials found and furnished therefor, together with the names of the persons received into the House, as well as of those discharged therefrom, and also of the earnings, (*p*) and such account shall be rendered to the County Council every year, or oftener when required by a By-law of the Council, and a copy thereof shall be presented to each branch of the Legislature. 29-30 V. c. 51, s. 416.

By-laws may be passed establishing workhouses and houses of correction.

**357.** The Council of every City and Town may (*q*) respectively pass By-laws:

(1.) For erecting and establishing within the City or Town, or on such Industrial Farm, or on any ground held by the Corporation for public exhibitions, a Workhouse or House of Correction, and for regulating the government thereof; (*r*)

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3. To provide by By-law for the appointment and duties of Inspectors, Keepers, Matrons and other servants;

4. To make by By-law rules and regulations for the government of the same.

At first the powers were only permissive (Con. Stat. U. C. cap. 54, ss. 415–419); then compulsory (29 & 30 Vic. cap. 51, s. 413); and now again permissive. As the names indicate, Houses of Industry and Refuge are intended for the poor, the destitute, and the idle. (See sec. 369.)

(*o*) See note *m* to sec. 354.

(*p*) The duties of Inspectors are, under this section, to keep an account showing the following:

1. The charges for erecting, keeping, upholding and maintaining the House of Industry and Refuge, and of all materials found and furnished therefor;

2. The names of the persons received into the House, as well as those discharged therefrom, and also of the earnings.

The directions are so explicit that it would be culpable neglect on the part of an Inspector not to follow them. (See note *o* to sec. 265.)

(*q*) "May," permissive, not obligatory. (See note *n* to sec. 355.)

(*r*) The powers are—

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(2.) For committing and sending, with or without hard labour, to the Workhouse or House of Correction, or to the Industrial Farm, by the Mayor, Police Magistrate, or any Justice of the Peace while having jurisdiction in the City or Town respectively, such description of persons as may by the Council be deemed, and by By-law be declared expedient; (*s*) and such Farm or ground, held as aforesaid, shall, for the purposes in this sub-section mentioned, be deemed to be within the City or Town and the jurisdiction thereof. (*t*) 29-30 V. c. 51, s. 417. Who liable to be committed thereto.

**358.** The Sheriff shall have the care of the County Gaol, Gaol offices and yard, and Gaoler's apartments, and the appointment of the Keepers thereof (*a*) whose salaries shall be fixed by the County Council, subject to the revision or requirement of the Inspector of Prisons. (*b*) 29-30 V. c. 51, s. 418. Custody of gaols. Keepers.

**359.** The County Council shall have the care of the Court House and of all offices and rooms and grounds con- County council to have care of court house, &c.

1. To erect and establish a Workhouse, &c.;

2. To regulate the government thereof.

(*s*) Workhouses or Houses of Correction are intended to be places of punishment, for the commitment thereto may be "with or without hard labour." The description of persons liable to be so committed is left to the determination of the Council by By-law.

(*t*) Municipal Councils cannot in general acquire property for any purpose without the limits of the Municipality. Here the power is to erect and establish a Workhouse "within or without" the City or Town. But for all the purposes of the section the property is, for obvious reasons, to be deemed to be within the City or Town and the jurisdiction thereof. (See note *j* to sec. 16, and note *e* to sec. 222.)

(*a*) Some disputes having hitherto existed between Sheriffs and Municipal Councils, arising out of a real or supposed conflict of jurisdiction as to Court Houses and Gaols (see *Huron and Bruce* v. *Macdonald*, 7 U. C. C. P. 278), the object of this and the three following sections is, so far as language can do so, to remove all cause of dispute. Though it is by sec. 348 enacted that the County Council may pass By-laws for erecting, improving, and repairing the Gaol, &c., and shall preserve and keep it in repair, and provide the fuel, food, and other supplies required, it is here enacted that the Sheriff shall have the *care* of the Gaol, Gaol offices and yard, and Gaoler's apartments, and the *appointment* of the Keepers. While upon the Council rests the responsibility of keeping the building, &c., in repair, and of providing the necessaries, upon the Sheriff rests the responsibility of management and internal government.

(*b*) While the appointment of the Keepers is vested in the Sheriff, the amount of salaries is to be fixed by the County Council, subject, however, to the revision of the Inspector of Prisons.

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nected therewith, whether the same forms a separate building or is connected with the Gaol, and shall have the appointment of the Keepers thereof, whose duty it shall be to attend to the proper lighting, heating, and cleaning thereof; (*c*) and shall from time to time provide all necessary and proper accommodation, fuel, light, and furniture for the Courts of Justice other than the Division Courts, and for all officers connected with such Courts. (*d*) 29-30 V. c. 51, s. 419.

City gaols to be regulated by by-laws of city council.

**360.** In any City not being a separate County for all purposes, (*e*) but having a Gaol or Court House separate from the County Gaol or Court House, the care of such City Gaol or Court House shall be regulated by the By-laws of the City Council. (*f*) 29-30 V. c. 51, s. 420.

Upon separation of union of counties, gaol and court house regulations to continue.

**361.** In case of a separation of a Union of Counties, all rules and regulations, and all matters and things in any Act

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(*c*) While the care of the Gaol is entrusted to the Sheriff, the care of the Court House is entrusted to the County Council. It is, however, expressly declared that the Council "*shall* from time to time provide all necessary and proper accommodation for the Courts of Justice (other than Division Courts) and for *all officers connected with such Courts.*" See sec. 362, as to Division Courts.

(*d*) Gaols have, at all times, been considered of universal concern to the public, and are still considered so to such an extent that to a great extent they have been placed under the control of a public officer—the Inspector of Prisons. (See note *a* to sec. 348.) Court Houses should not be deemed of less public concern, unless the lives of Judges are to be deemed of less value than the lives of felons and other criminals. It was a mistake ever to have placed the building and control of Court Houses elsewhere than with the Government. In the adjoining Province of Quebec a different policy has been adopted, and the contrast between the Court Houses there and here establishes the wisdom of the Government policy. It is not too late for the Legislature to give a controlling power as regards the construction and maintenance of Court Houses to the Government. The administration of justice is not a matter of mere local concern; and the reason which has impelled the Legislature to place the erection and maintenance of Gaols under the control of the Government, applies with as great force to the erection and maintenance of Court Houses.

(*e*) Every City is a County of itself for municipal purposes. (See *The Queen* v. *Smith*, 7 U. C. L. J. 66; *The Queen* v. *Rochester*, *Ib.* 101, 102.)

(*f*) So long as the Gaol and Court House are the property of the City—and it is the policy of the Legislature to give the control of such buildings to Municipal bodies—the right of the City Council to the control, in preference to that of any other Municipal body, cannot be questioned. (See note *m* to sec. 363.)

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of Parliament for the regulation of, or relating to Court Houses or Gaols in force at the time of the separation, (*g*) shall extend to the Court House and Gaol of the Junior County. (*h*) 29-30 V. c. 51, s. 406.

Division courts accommodation.

**362.** The Municipality in which a Division Court is held shall furnish a Court Room and other necessary accommodation for holding said Court, not in connection with any hotel. (*i*)

Expenses of court houses and gaols in case of cities and towns separated from counties.

**363.** Cities and Towns separated from Counties (*k*) shall, as parts of their respective Counties for judicial purposes, (*l*) bear and pay their just share or proportion of all charges and expenses from time to time as the same may be incurred, of erecting, building and repairing and maintaining the Court House and Gaol of their respective Counties; (*m*) and in case the Council of the City or Town separate as aforesaid, and the Council of the County in which such City or Town is situate for judicial purposes, cannot by agreement from time to time settle and determine the amount to be so payable by such City or Town respectively, then the same

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(*g*) See note *d* to sec. 359.

(*h*) See sec. 34 and following sections.

(*i*) For some reason the County Council, though bound to provide all necessary and proper accommodation for Courts of Justice, are not bound to find accommodation for Division Courts. (Sec. 359.) The duty, in consequence, has devolved chiefly upon speculative tavern-keepers, who were only too glad to provide the accommodation, so as to increase their traffic, to the great scandal of the administration of justice. The scandal is now ended. The duty is thrown upon the local Municipality in which the Court is held, and that "not in connection with any hotel."

(*k*) See note *l* to sec. 360.

(*l*) Though there is a separation for municipal, there is not for judicial purposes.

(*m*) The inhabitants of Cities and Towns separated from Counties, although contributing nothing towards either the erection or maintenance of Court Houses built and maintained by the Counties in which such Cities and Towns are situate, like the inhabitants of other local Municipalities, such as Townships and Villages in a County, use the Court House and Gaol of the County in common. This being so, it is only fair that all should bear a just share or proportion of all charges and expenses from time to time incurred in and about erecting and maintaining the Court House and Gaol. The obligation is certainly a moral one, but it has been found that moral obligations are not strong enough to compel Municipal Corporations to be just to each other. (See note *a* to sec. 364.) The result is that the Legislature has here to some extent converted the moral into a legal obligation.

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shall be determined by arbitration, according to the provisions of the Act. (*n*)

Compensation by city or town for use of court house, &c.

**364.** While a City or Town uses the Court House, Gaol or House of Correction of the County, the City or Town shall pay to the County such compensation therefor, and for the care and maintenance of prisoners, as may be mutually agreed upon, (*a*) or be settled by arbitration under this Act. (*b*) 29-30 V. c. 51, sec. 403.

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(*n*) See note *b* to sec. 364.

(*a*) In consequence of the separation of the City of Toronto from the County of York for judicial purposes, a deed was executed between the respective Corporations, in which the City covenanted to pay the County a certain annual sum for the use of the Court House. The deed also contained other agreements as to the use of the Gaol. This arrangement was to continue in force until twelve months' notice to determine it should be given. By the Law Reform Act, which came into force in February, 1869, the City was reunited to the County for judicial purposes, and on the 21st March, 1869, the City gave the County the stipulated notice as to intended discontinuance of the use of the Gaol, stating that, as to the Court House, the action of the Legislature had virtually terminated the provision respecting it, and that no further payment would therefore be made. *Held*, that the contention of the City was correct; that it had been released from its covenant to pay by the operation of the Law Reform Act; and that there was no legal liability on the part of the City even for an aliquot portion of the half-year's rent which would have become due on the 21st March following. (*Toronto* v. *York*, 21 U. C. C. P. 95.) And it was afterwards held, in a subsequent suit between the same parties, that in the absence of express legislation, the City was not bound to pay the County any compensation whatever for the use of the Court House. (22 U. C. C. P. 514.) Hagarty, C.J., said, "The City makes no special use of the Court House apart from the County of York. It can hold no Courts of its own. Its user is the same in a larger degree as the user by the Town of Newmarket or the Village of Yorkville. Unless there be some express provision in the statute law, I do not see how there can be any special liability created" (*Ib.* 517); and again, "the City is now to all judicial intents and purposes a part of the County of York. Except as part of such County, in common with other Municipalities throughout the County, it makes no use of the Court House, and, in the absence of express enactment providing therefor, I think our judgment must be for the defendants." (*Ib.* 578.) It is presumed that the previous section (sec. 363) is the legislation thus invoked.

(*b*) Arbitrators were appointed by articles of agreement, dated 28th December, 1855, to settle certain differences recited as pending between the City of London and the County of Middlesex, respecting the compensation to be paid by the City to the County for the use of the County Court House and Gaol, and concerning certain financial matters then depending between the respective Municipalities. On the same day they awarded, first, that the stock held by the County in certain railways should be divided in the propor-

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**365.** In case, after the lapse of five years from such compensation having been so agreed upon or awarded, or having been settled by Statute, and whether before or after the passing of this Act, (*c*) it appears reasonable to the Governor in Council, upon the application of either party, that the amount of the compensation should be reconsidered, he may, by an Order in Council, direct that the then existing arrangement shall cease after a time named in the order, and after such time the Councils shall settle anew, by agreement or by Arbitration under this Act, the amount to be paid

When the amount of compensation may be reconsidered.

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tion of one-fifth to be transferred to the City, the remaining four-fifths still to belong to the County; secondly, that the City should pay the County £2,675 on account of the County roads, and should keep such roads in repair within the City limits; thirdly, that the City should pay the County £1,966 in full of its portion of the County debt; fourthly, that in future each of the Municipalities should pay the expense of all prisoners committed to the County Gaol by each of them respectively, and that the portion of such expense incurred by the City should be paid over by them in January of each year; fifthly, that in future the City should pay to the County one-third of all incidental expenses connected with the Court House and Gaol, including repairs and insurance, together with one-third of all expenses connected with the administration of justice not paid by Government,—such payment to be made in the month of January in each year; sixthly, that the City should pay to the County the sums mentioned in the first, second and third clauses of the award, with interest, in twelve months from the 1st of January, 1856, except that the City Council should pay its share of the railway stock at the time the County debentures given therefor should become payable; seventhly, that the award should take effect on the 1st January, 1855, and remain in force till the 1st January, 1860. *Held*, that the giving to the award a retrospective effect—to the 1st January, 1855, being the time when London was declared a City—was not objectionable, but proper; that the arbitrators had authority to give time for payment, as in the sixth clause; that the limiting the continuance of the award till 1st January, 1860, was inconsistent with the 12 Vic. cap. 81, sec. 200 (so far as material the same as sec. 365 of this Act), and rendered the award bad as to the fourth and fifth clauses, respecting the Court House and Gaol; that the fourth clause of the award was also bad, because it authorized a ratable division of the expenses, instead of awarding the payment of an annual sum (*sed qu.* under this Act); that the fourth and fifth clauses might be separated from the rest, and the award be set aside as to them only. (*In re Middlesex and London*, 14 U. C. Q. B. 334.)

(*c*) After the lapse of five years, the amount of compensation may, if the Governor in Council see fit, be reconsidered. If the Governor in Council so decide, then the existing arrangement is made to cease after a time named in the order in Council, in which event the Councils must settle anew, either by agreement or arbitration. The power here conferred appears to be rather a legislative than an executive power. See note *l* to sec. 8.

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from the time so named in the order. (*d*) 29-30 V. c. 51, s. 404.

Existing Lock-up houses to continue.

**366.** Nothing herein contained shall affect any Lock-up House (*e*) heretofore lawfully established, but the same shall continue to be a Lock-up House as if established under this Act. (*f*) 29-30 V. c. 51, s. 411.

This Act not to affect 29 & 30 Vic. c. 51, s. 409, which enables justice to direct confinement in certain cases.

**367.** Nothing herein contained shall be taken or construed to affect or repeal section four hundred and nine of the Act passed in the session of the Parliament of the late Province of Canada, held in the twenty-ninth and thirtieth years of the reign of Her present Majesty, chaptered fifty-one, (*g*) which enacts that "any Justice of the Peace of the County may direct, by warrant in writing under his hand and seal, the confinement in a Lock-up House within his County, for a period not exceeding two days, of any person charged on oath with a criminal offence, whom it may be necessary to detain until examined, and either dismissed or fully committed for trial to the Common Gaol, and until such person can be conveyed to such Gaol; also the confinement in such Lock-up House, not exceeding twenty-four hours, of any person found in a public street or highway in a state of intoxication, or any person convicted of desecrating the Sabbath, (*h*) and generally may commit to a Lock-up House instead of the Common Gaol or other house of correction, any person convicted on view of the justice, or summarily convicted before any Justice or Justices of the

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(*d*) See note *b* to sec. 369.

(*e*) See note *g* to sec. 351.

(*f*) This section preserves only Lock-up Houses *lawfully* established.

(*g*) The reason that this section, though not repealed or affected by this Act, is here set forth in words at length, will be found explained in note *v* to sec. 304.

(*h*) The following classes of offenders may be committed to Lock-up Houses:

1. Any person charged on oath with a criminal offence, whom it may be necessary to detain until examined, &c.;

2. Any person found in a public street or highway in a state of intoxication;

3. Any person convicted of desecrating the Sabbath.

4. Any person convicted on view, or summarily convicted, of any offence under any statute or Municipal By-law.

The duration of imprisonment, it will be observed, varies in regard to the description of the offender and nature of his offence.

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Peace of any offence cognizable by him or them, and liable to imprisonment therefor under any statute or Municipal By-law." 29-30 V. c. 51, s. 409.

**368.** The expense of conveying any prisoner to, and of keeping him in a Lock-up House, shall be defrayed in the same manner as the expense of conveying him to and keeping him in the Common Gaol of the County. (*i*) 29-30 V. c. 51, s. 410.

Expense of conveying and maintaining prisoners.

**369.** Nothing herein contained shall be taken or construed to affect or repeal so much of sections four hundred and fourteen and four hundred and fifteen of the Act passed in the session of the Parliament of the late Province of Canada, held in the twenty-ninth and thirtieth years of the reign of Her present Majesty, and chaptered fifty-one, (*k*) which enact that :—

This Act not to affect 29 & 30 Vic. c. 51, ss. 414, 415, which enacts that

"Any two of Her Majesty's Justices of the Peace or of the Inspectors appointed as aforesaid may, by writing under their hands and seals, commit to the House of Industry or of Refuge, to be employed and governed according to the rules, regulations, and orders of the House;

Justices, &c., may commit persons who are

"(1.) All poor and indigent persons who are incapable of supporting themselves; (*l*)

Indigent.

"(2.) All persons without the means of maintaining themselves, and able of body to work, and who refuse or neglect so to do; (*m*)

Idle.

"(3.) All persons leading a lewd, dissolute or vagrant

Lewd.

(*i*) The whole of the expenses of the administration of criminal justice in Upper Canada should be paid out of the Consolidated Revenue Fund of the Province. (Con. Stat. U. C. cap. 120.) All accounts of or relative to such expenses, must be audited, vouched and approved under such regulations as the Governor in Council from time to time directs and appoints. (*Ib.* sec. 2.) The several heads of expense mentioned in the schedule to the Act, are deemed expenses of the administration of criminal justice within the meaning of the Act. (*Ib.* sec. 3.) See *In re Pousett and Lambton*, 21 U. C. Q. B. 472; s. c. 22 U. C. Q. B. 80.

(*k*) The reason that these sections, though not repealed or affected by this Act, are here set forth will be found explained in note *v* to sec. 304.

(*l*) That is, poor by impotency or defect, as the aged, decrepit, or deformed.

(*m*) That is, poor who, though not so by impotency or defect, yet, from laziness or some similar cause, "refuse or neglect" to work.

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life, and exercising no ordinary calling, or lawful business sufficient to gain or procure an honest living; (*n*)

Frequenters of public houses.

"(4.) And all such as spend their time and property in public houses, to the neglect of any lawful calling; (*o*)

Idiots.

"(5.) And idiots; (*p*)

Punishment of refractory inmates.

"And every person committed to the House of Industry or of Refuge, if fit and able, shall be kept diligently employed at labour during his continuance there; and in case any such person is idle and does not perform such reasonable task or labour as may be assigned, or is stubborn, disobedient or disorderly, such person shall be punished according to the rules and regulations of the House of Industry or of Refuge in that behalf." 29-30 V. c. 51, ss. 414, 415.

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(*n*) That is, poor by prodigality and debauchery, sometimes called thriftless poor.

(*o*) That is, persons who, though not really poor, are persons much the same as those described in the last note—persons neglecting a lawful calling, and spending their substance in public houses.

(*p*) An idiot or natural fool is one without understanding from his nativity, and therefore presumed not likely ever to attain understanding.

These are persons commonly described as vagrants—loose, idle and disorderly persons, or pests of society. They are the subject in a more extended form of legislation under an Act of the Dominion Legislature. (32 & 33 Vic. cap. 28.) It declares that the following persons shall be deemed vagrants—loose, idle or disorderly persons—and be liable to be proceeded against as such:

1. All idle persons who, not having visible means of supporting themselves, live without employment.

2. All persons who, being able to work, and thereby or by other means to maintain themselves and families, wilfully refuse or neglect to do so.

3. All persons openly exposing in any street, road, public place or highway any indecent exhibition, or openly or indecently exposing their persons.

4. All persons who, without a certificate, signed within six months by a Priest, Clergyman or Minister of the Gospel, or two Justices of the Peace residing in the Municipality where the alms are being asked, that he or she is a deserving object of charity, wander about and beg, or who go about from door to door, or place themselves in the streets, highways, passages or public places to beg or receive alms.

5. All persons loitering in the streets or highways and obstructing passengers by standing across the footpaths, or by using insulting language, or in any other way, or tearing down or defacing signs, breaking windows, breaking doors, or door-plates, or the walls of

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DIVISION XI.—INVESTIGATIONS AS TO MALFEASANCE OF CORPORATE OFFICERS.

Investigation by county judge of charges of malfeasance by county officers.

**370.** In case the Council of any Municipality at any time passes a resolution requesting the Judge of the County Court of the County in which the Municipality is situated, to investigate any matter to be mentioned in the resolution, (*q*) and relating to a supposed malfeasance, breach of trust, or

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houses, roads or gardens, destroying fences, causing a disturbance in the streets or highways by screaming, swearing or singing, or being drunk, or impeding or incommoding peaceable passengers.

6. All common prostitutes or night walkers wandering in the fields, public streets or highways, lanes, or places of public meeting or gathering of people, not giving a satisfactory account of themselves. (See *The Queen* v. *Levecque*, 30 U. C. Q. B. 509.)

7. All keepers of bawdy-houses, or houses of ill-fame, or houses for the resort of prostitutes, and persons in the habit of frequenting such houses, not giving a satisfactory account of themselves.

8. All persons who have no peaceable profession or calling to maintain themselves by, but who do, for the most part, support themselves by gaming or crime, or by the avails of prostitution.

The principal Vagrant Act in England is 5 Geo. IV. cap. 83. The decisions under it will be found in Paley on Convictions, 685, 686, 5th Ed. Its provisions have been extended by the Eng. Stat. 31 & 32 Vic. cap. 52, and enforced by the Eng. Stat. 34 & 35 Vic. cap. 112, intituled "An Act for the more effectual Prevention of Crime." Although vagrants may be proceeded against criminally under the general law, it would seem that under a power "to regulate the Police of the City" By-laws may be passed for arresting and fining vagrants, so long as the By-laws are not in conflict with the general law. (See *St. Louis* v. *Bentz*, 11 Mo. 61; *State* v. *Cowan*, 29 Mo. 330; *Shafer* v. *Mumma*, 17 Md. 331; *Byers* v. *Commonwealth*, 42 Pa. St. 89.) Such By-laws are looked upon as mere Police regulations rather than laws against crime. (See *Adeline Nott's Case*, 11 Maine, 208; *Portland* v. *Bangor*, 42 Maine, 403.) The welfare of the citizens does not depend so much on the existence of laws against vagrants as in the proper enforcement of them. These laws are as much disregarded by the Police as by the thriftless and vicious class against whom they are enacted.

(*q*) Provision is made by sec. 275 for an inquiry, under certain circumstances, into "the financial affairs of the Corporation and things connected therewith." This section contemplates a much wider range of inquiry. The matters as to which inquiry may be made under this section are—

1. "Supposed malfeasance, breach of trust, or other misconduct" on the part of any member of the Council or officer of the Corporation, or of any person having a contract therewith, in relation to the duties or obligations of the member, officer or other person to the Municipality.

2. "Any matter" connected with the good government of the Municipality, or the conduct of any part of the public business thereof.

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other misconduct (*r*) on the part of any member of the Council or officer of the Corporation, or of any person having a contract therewith, in relation to the duties or obligations of the member, officer or other person, to the Municipality, or in case the Council of any Municipality sees fit to cause inquiry to be made into or concerning any matter connected with the good government of the Municipality, or the conduct of any part of the public business thereof, (*s*) and if the Council at any time passes a resolution requesting the said Judge to make the inquiry, the Judge shall inquire into the same, and shall for that purpose have all the powers of Commissioners under the statute of Ontario respecting inquiries concerning public matters and official notices, (*t*) and the Judge shall, with all convenient

Judge to have powers under 31 Vic. cap. 6, Ont.

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The inquiry, in any case, is to be made by the County Judge, on a resolution requesting him to make the inquiry.

The subject matter of the inquiry should be mentioned in the resolution.

The duty of the County Judge to make the inquiry, on the passing of a proper resolution, is imperative. Having made the inquiry, it is also his duty, with all convenient speed, to report to the Council—

1. The result of the inquiry; and,

2. The evidence taken thereon.

Apparently no provision is made for the expenses of the inquiry, as in the case of inquiries into the finances of the Corporation. (Sec. 276.)

(*r*) "Or other misconduct." What is here meant, no doubt, is misconduct in the nature of malfeasance or breach of trust of some kind, appertaining to the duties of the office. According to the general construction of statutes, where general words follow particular words, they are to be construed *ejusdem generis* with the particular words which have preceded them, and are to be held to be of the same nature. (*The King* v. *Manchester and Salford Water Works Co.*, 1 B. & C. 630; *The King* v. *Mosley*, 2 B. & C. 226; *Lyndon* v. *Standbridge*, 2 H. & N. 46; *The Queen* v. *Neath*, L. R. 6 Q. B. 707; *The Queen* v. *Cleworth*, 9 L. T. N. S. 682.)

(*s*) The design of this part is to embrace cases not falling within the preceding part of the section, and, as it were, to widen the field of inquiry. The phrases, "any matter connected with the good government of the Municipality," and "the conduct of any part of the public business thereof," are as general as can well be made. They are taken from the statute 31 Vic. cap. 6, Ont., to which reference is made in the next note.

(*t*) Commissioners so appointed have the power of summoning before them any party as witnesses, and of requiring them to give evidence on oath, orally or in writing (or on solemn affirmation, if they are parties entitled to affirm in civil matters), and to produce such documents and things as such Commissioners think requisite to the full investigation of the matters into which they are appointed

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speed, report to the Council the result of the inquiry and the evidence taken thereon. (*u*) 29-30 V. c. 51, s. 380; 32 V. c. 6, s. 12.

DIVISION XII.—WHEN MAYOR MAY CALL OUT "POSSE COMITATUS."

**371.** The Mayor of any City or Town may call out the *posse comitatus* to enforce the law within his Municipality should exigencies require it, (*v*) but only under the same circumstances in which the Sheriff of a County may now by law do so. 29-30 V. c. 51, s. 365.

Mayor may call out *posse comitatus*.

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to examine (31 Vic. cap. 6, sec. 1); and the Commissioners have the same power to enforce the attendance of such witnesses, and to compel them to give evidence, as is vested in any court of law in civil cases. (*Ib.* sec. 2.) The words in the last mentioned section to the effect that "any wilfully false statement made by any such witness on oath or solemn affirmation shall be a misdemeanor punishable in the same manner as wilful and corrupt perjury," have been repealed by Stat. Ont. 32 Vic. cap. 27, sec. 3, as being beyond the competence of the local legislature. (See note *v* to sec. 304.) But they are the same as previously used in Con. Stat. Can. cap. 13, s. 1, sub. 2, which is still in force. No party, in such an inquiry, can be compelled to answer any question by his answer to which he might render himself liable to a criminal prosecution. (See sec. 2 of 31 Vic. cap. 6, and sec. 1, sub. 2 of Con. Stat. Can. cap. 13, and note *f* to sec. 164.) In this respect there is a marked difference between inquiries here authorized and election inquiries. (See sec. 164.) Witnesses, it is apprehended, would not be entitled to compensation for loss of time. (See note *o* to sec. 275.)

(*u*) See note *q* to sec. 370.

(*v*) "*Posse Comitatus*," or power of the County, includes the aid of and attendance of every person above the age of fifteen within the County. Persons able to travel are required to be assistant in this service. It is used when a riot is committed, a possession is kept on a forcible entry, or any force or rescue made, contrary to the Queen's writ or in opposition to the execution of justice. The power is usually summoned by the Sheriff. But with respect to writs that issue in the first instance to arrest in civil suits, the Sheriff is not bound to take the *posse* to assist him in the execution of them; though he may do so if he pleases, on forcible resistance to the execution of the process. Sheriffs, &c., are to be assisting Justices of the Peace in suppressing riots, &c., and raise the *posse* by charging any number of men to attend for that purpose, who may take with them such weapons as shall be necessary, and they may justify the beating and even killing such rioters as resist or refuse to surrender; and persons refusing to assist in the *posse* may be fined and imprisoned. It is lawful for a peace officer to assemble a competent number of people and sufficient power to suppress rebels, rioters, &c.; but there must be great caution, lest under a pretence of keeping the peace, the peace officer cause a breach of it; and Sheriffs, &c., are punishable for using heedless violence or alarming the country in these cases without just ground. (See Watson's Office of Sheriff, 2nd Ed. 2, 73, 193.)

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# PART VII.

## GENERAL POWERS OF MUNICIPAL COUNCILS.

DIVISION I.—OF COUNTIES, TOWNSHIPS, CITIES, TOWNS AND INCORPORATED VILLAGES.
DIVISION II.—OF COUNTIES, CITIES, TOWNS AND INCORPORATED VILLAGES.
DIVISION III.—OF TOWNSHIPS, CITIES, TOWNS AND INCORPORATED VILLAGES.
DIVISION IV.—OF COUNTIES, CITIES, AND SEPARATED TOWNS.
DIVISION V.—OF CITIES, TOWNS AND INCORPORATED VILLAGES.
DIVISION VI.—OF CITIES AND TOWNS.
DIVISION VII.—OF TOWNSHIPS, TOWNS, AND INCORPORATED VILLAGES.
DIVISION VIII.—OF TOWNS AND INCORPORATED VILLAGES.
DIVISION IX.—OF COUNTIES ONLY.
DIVISION X.—OF TOWNSHIPS ONLY.
DIVISION XI.—AS TO HIGHWAYS AND BRIDGES.
DIVISION XII.—AS TO WORKS PAID FOR BY LOCAL RATES.
DIVISION XIII.—AS TO RAILWAYS.

### DIVISION I.—POWERS OF COUNTIES, TOWNSHIPS, CITIES, TOWNS AND INCORPORATED VILLAGES.

Councils may make by-laws—

**372.** The Council of every County, Township, City, Town and Incorporated Village (*z*) may pass By-laws:

*Obtaining Property.*

For obtaining property, real and personal, &c.

(1.) For obtaining such real and personal property as may be required for the use of the Corporation, (*a*) and for erecting, improving and maintaining a hall, and any other houses

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(*z*) It is to be observed that this section applies to *all* Municipal Corporations.

(*a*) The right of a Municipal Corporation to acquire property independently of statute is by no means free from doubt. (See note *s* to sec. 170.) But in order that there should be no doubt as to the right of the Corporation to acquire property for corporate purposes, express power is here conferred. It is not to be extended to the acquirement of land for speculation or profit. (*Bank of Michigan* v. *Niles*, 1 Doug. (Mich.) 401; *Davison College* v. *Chambers' Executors*, 3 Jones, Eq. N. C. 253-258; *State Bank* v. *Brackenridge*, 7 Blackf. (Ind.) 395; *McCartee* v. *Orphan Society*, 9 Cow. 437; *Chambers* v. *St. Louis*, 29 Mo. 543.) But the acquirement of wet lands, with a view to their improvement and sale, is expressly authorized. (Sub. 15-18 of this section.) In the event of the Corporation lending money on mortgage of realty, if default be made in the payment of the mortgage money, the Corporation is entitled to a decree of foreclosure, notwithstanding the Statutes of Mortmain, and is not restricted to a decree for sale of the land (*Orford* v. *Bailey*, 12 Grant, 276); and it would also seem that a Municipal Corporation may give time to a debtor and take a mortgage on real estate to secure its payment.

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and buildings required by and being upon the land of the Corporation, (*b*) and for disposing of such property when no longer required. (*c*) 29-30 V. c. 51, s. 246, sub. 1.

For obtaining property (real and personal), &c.

*Appointing certain Officers.*

(2.) For appointing (*d*) such Pound-keepers, Fence-viewers, Overseers of Highways, Road Surveyors, Road Commis-

May appoint certain officers.

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(See *Belleville* v. *Judd*, 16 U. C. C. P. 397.) The laying out, upon a map of an intended town, of squares or other open spaces for public recreation or amusement, or for any other public purpose, renders them as sacred to such purpose as the streets themselves (*per* Sprague, V. C., in *Guelph* v. *The Canada Company*, 4 Grant, 654); and if an alienation to a different purpose, by a person pretending to have the right to alienate, be attempted, the Court of Chancery will interfere by injunction to restrain it. (*Ib.*) So if the Municipal Corporation itself be a trustee of land for a public purpose, and without authority attempt to alienate it, in breach of the trust for which it is held, the Court of Chancery would interfere by injunction to restrain the alienation, or, if actually made, would order a reconveyance. (*Attorney-General* v. *Goderich*, 5 Grant, 402.) The public property of a Corporation is not liable to be sold for the debts of the Corporation. (See note *a* to sec. 324.) The Corporation has not, except when expressly authorized by statute, power to acquire land for corporate purposes beyond its corporate limits. (See note *j* to sec. 16, and note *e* to sec. 222.)

(*b*) The power to erect a hall and other buildings required by the Corporation does not, it is apprehended, include a saw-mill, erected with the avowed intention of benefiting the Municipality. (See *Kinloss* v. *Stauffer*, 15 U. C. Q. B. 414.) The Court of Queen's Bench refused a rule *nisi* for a mandamus at the instance of the Justices of the Huron District, to compel the Municipal Council of the Huron District to build a Court House. (*Justices of the Huron District* v. *Huron Council*, 5 U. C. Q. B. 574.) It is undecided whether, if a Municipal Council neglects to repair the steps leading to a Court House, and an individual in consequence thereof falls and loses his life, an action will lie against the Corporation, at the suit of the representatives, under Con. Stat. Can. cap. 78. (*Hawkeshaw* v. *Dalhousie*, 7 U. C. Q. B. 590.) A By-law passed by the Municipal Council of Prescott and Russell, to tax the County of Russell alone for the erection of a registry office for the use of the United Counties, was set aside. (*Smith* v. *Prescott and Russell*, 10 U. C. Q. B. 282.)

(*c*) This includes a Town Hall and the site on which it stands, when it is deemed that a new Town Hall in another situation would be more convenient for the public. (*In re Hawke and Wellesley*, 13 U. C. Q. B. 636.)

(*d*) It is not here expressed in what manner, that is, whether under corporate seal or otherwise, the officers in this section named are to be appointed. The bill of 1858, when introduced to the House of Assembly, had the words "under the corporate seal;" but these words were, for some reason, afterwards struck out in committee. It has always been a recognized qualification of the principle which requires the use of the seal, that there are certain small matters of



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sioners, Valuators, and such other officers as are necessary in the affairs of the Corporation, or for carrying into effect the provisions of any Act of the Legislature, (*e*) or for the removal of such officers; (*f*) but nothing in this Act shall prevent any member of a Corporation from acting as Commissioner, Superintendent or Overseer over any road or work undertaken and carried on, in part or in whole, at the expense of the Municipality; and it shall be lawful for said Municipality to pay any such member of the Corporation acting as such Commissioner, Superintendent or Overseer. (*g*) 29-30 V. c. 51, s. 246, sub. 2; 31 V. c. 30, s. 25.

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such frequent occurrence in the course of conducting affairs by a Corporation, that it appears to be of necessity that Corporations should be allowed to transact them without going through the formality of a sealed instrument. The hiring of servants to perform their ordinary duties has from a very early period been one of these exceptions. (*Raines* v. *The Credit Harbour Company*,, 1 U. C. Q. B. 174.) Whether the officers named in this section come within the exception is, to say the least of it, doubtful. The old law required such appointments to be under corporate seal (12 Vic. cap. 81, s. 31, sub. 5), and the intendment of this subsection, which must be taken in connection with the general words at the commencement of this section, appears to be that the appointment should be by law.

(*e*) The power is not only to appoint the officers named, but "such *other* officers as are *necessary* in the affairs of the Corporation, or for carrying into effect the provisions of any Act of the Legislature." There are those who contend that it is incident to the powers of a Municipal Corporation to appoint all officers necessary in the affairs of the Corporation. (*Vintners* v. *Passey*, 1 Burr. 235; *Hastings Case*, 1 Mod. 24; *The King* v. *Barnard*, Comb. 416; *Hoboken* v. *Harrison*, 1 Vroom. (N. J.) 73; *White* v. *Tallman*, 2 Dutch. (N. J.) 67; *People* v. *Bedell*, 2 Hill (N. Y.) 196; *Field* v. *Girard College*, 54 Pa. St. 233.) But where an Act makes provision for the appointment of principal officers named, and other necessary officers, the statute must, so far as possible, be followed, and no appointments be made in contravention of it or otherwise, as directed by it. (*The King* v. *Weymouth*, 7 Mod. 373; *The King* v. *Bumstead*, 2 B. & Ad. 699; *The King* v. *Spencer*, 3 Burr. 1827; *The King* v. *Chitty*, 5 A. & E. 609; *Stadler* v. *Detroit*, 13 Mich. 346; *Vason* v. *Augusta*, 38 Geo. 542.)

(*f*) Words authorizing the appointment of any public functionary include the power of removing him, reappointing him, or appointing another in his stead, in the discretion of the authority in whom the power of appointment is vested. (Stat. Ont. 31 Vic. cap. 1, s. 7. sub. 25.) But the power of removal cannot, unless expressly delegated, be exercised by a portion merely of the Corporation, but by the Corporation as a corporate body acting duly and regularly. (*Lord Bruce's Case*, 2 Str. 819; *The King* v. *Lyme Regis* (*Fane's Case*), Doug. 149; *The King* v. *Richardson*, 1 Burr. 517; *The King* v. *Doncaster*, Say. 38; *The King* v. *Taylor*, 3 Salk. 231; *The King* v. *Feversham*, 8 T. R. 356; *State* v. *Jersey City*, 1 Dutch, (N. J.) 536.)

(*g*) If it were not for some provision of this kind, the contract, as it were, between the Corporation and the member to act as a Com-

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(3.) For regulating the remuneration, fees, charges and duties of such officers, (*h*) and the securities to be given for the performance of such duties. (*i*) 29-30 V. c. 51, s. 246, sub. 3. May fix fees and securities.

*Aiding Agricultural and other Societies.*

(4.) For granting money or land (*k*) in aid of the Agricultural Association of Ontario, or of any duly organized Agricultural or Horticultural Society in Ontario, or of the Board of Arts and Manufactures for Ontario, or of any incorporated Mechanics' Institute within the Municipality. 29-30 V. c. 51, s. 246, sub. 4. May grant aid to agricultural societies.

*Aiding Manufacturing Establishments.*

(5.) For granting aid by way of bonus for the promotion of manufactures within the limits, by granting such sum or sums of money to such person or body corporate, and in respect of such branch of industry as the said Municipality may determine upon; and to pay such sum, either in one sum or in an annual or other periodical payments, with or without interest, and subject to such terms, conditions and restrictions as the said Municipality may deem expedient, May give aid by way of bonus to manufactures.

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missioner, &c., would be void both at law and in equity. (See sec. 327 and notes thereto.)

(*h*) It is the duty of the Council to provide for the payment of all Municipal officers, whether the remuneration is settled by statute or by By-law of the Council. (See note *t* to sec. 219.)

(*i*) See note *r* to sec. 195.

(*k*) Municipal Corporations have no power to grant the money of the ratepayers for purposes other than those expressly authorized, or for such purposes as are necessary to carry out powers expressly conferred upon them or existing by necessary intendment. To such an extent has this very proper limitation been carried in the United States, that the power of a Corporation to grant money for the celebration of their national birthday, 4th July, has been denied. (*Hodges* v. *Buffalo*, 2 Denio 110; see also *Tash* v. *Adams*, 10 Cush. 252.) The powers here conferred are to grant money or land in aid—

1. Of the Agricultural Association of Ontario;

2. Of any duly organized Agricultural or Horticultural Society in Ontario;

3. Of the Board of Arts and Manufactures for Ontario;

4. Of any Incorporated Mechanics' Institute within the Municipality.

The land intended to be granted is, it is apprehended, land held otherwise than for corporate purposes, and so not clothed with a trust for the use of the public. (See note *a* to this section.)

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and may take security therefor; (*l*) Provided, however, that no such By-law shall be passed until the assent of the electors has been obtained, in conformity with the provisions of this Act in respect of By-laws for creating debts. (*m*) Any Municipality granting such aid may take and receive, of and from such person or body corporate that may receive any such aid, security for the compliance with the terms and conditions upon which such aid may be given. (*n*) 34 V. c. 30, s. 6.

*Aiding Road Companies.*

Aid for roads, bridges and harbours.

(6.) For taking stock in, or lending money or granting bonuses to, any Incorporated Company in respect of any road, bridge or harbour within or near the Municipality, under and subject to the respective statutes in that behalf. (*o*) 29-30 V. c. 51, s. 333, sub. 8; 37 V. c. 16, s. 14.

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(*l*) A Municipal Council has power to exempt any manufacturing establishment, in whole or in part, from taxation for any period not longer than ten years, and to renew the exemption for a further period of ten years. (Sec. 259.) The object is to encourage manufacturing establishments within the limits of the Municipality. (See note *m* to sec. 259.) This subsection contemplates the granting of money by way of bonus for like purposes. (See *Allen* v. *Inhabitants of Jay*, 12 Am. Law Reg. N. S. 481, 58 Maine, Appendix, 590 *et seq*; *Commercial National Bank* v. *City of Iola*, 2 Dillon, C. Ct. Rep. 353.) Whether the money is intended as an absolute gift or only a loan is not very clear. The fact that the Council is empowered "to take security therefor" would appear to indicate the latter view to be the correct one. This, however, may only mean security that the money shall be applied to the promotion of the industry for which it is designed. But in this view the latter part of the clause, authorizing the Municipality "to take security for the compliance with the terms and conditions upon which such aid may be given," would be unnecessary. Whatever the Legislature meant, its meaning is not very clearly expressed.

(*m*) See sec. 231, *et seq.*

(*n*) See note *l supra.*

(*o*) Any Municipal Council having jurisdiction within the locality through or along the boundary of which any such road passes, *may subscribe for, hold, sell and transfer stock* in any Company formed under the general Act (Con. Stat. U. C. cap. 49), or any former Act passed for the like purpose, and may from time to time direct the Mayor, Reeve, Warden or other chief officer of the Municipality, on behalf thereof, to subscribe for such stock in the name of the Municipality, and to act for and on behalf of the Municipality in all matters relating to such stock, and the exercise of the rights of the Municipality as a stockholder; and the Mayor, Reeve, Warden or other chief officer shall, whether otherwise qualified or not, be deemed a stockholder in the company, and may vote and act as such, subject to any rules and orders in relation to his authority made in that behalf

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*Aiding Indigent Persons and Charities.*

(7.) For aiding in maintaining any indigent person belonging to or found in the Municipality at any Workhouse, Hospital or Institution for the Insane, Deaf and Dumb, Blind or other public institution of a like character; or granting aid to any charitable institution or out-of-door relief to the resident poor. (*p*) *Vide* 29-30 V. c. 51, ss. 279 & 299, sub. 11; 31 V. c. 30, s. 28. May aid indigent persons and charities.

*Census.*

(8.) For taking a census of the inhabitants, or of the resident male freeholders and householders in the Municipality. (*q*) 29-30 V. c. 51, s. 246, sub. 5. Local census.

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by the By-laws of the Municipal Council or otherwise, and may vote according to his discretion in cases not provided for by the Municipality. (*Ib.* sec. 63.) The Municipal Council may pay all the instalments upon the stock they subscribe for and acquire, out of any moneys belonging to the Municipality, and which are not specially appropriated to any other purpose, and may apply the moneys arising from the dividends or profits on the stock, or from the sale thereof, to any purpose to which unappropriated moneys belonging to the Municipality may be lawfully applied. (*Ib.* sec. 64.) So the Municipal Council of any locality through or along the boundary of which any such road passes, may, out of any moneys belonging to the Municipality, and not appropriated to any other purpose, *lend money* to the company authorized to make the road, upon such terms and conditions as may be agreed on between the company and the Municipality making the loan; and the Municipality may recover the money so loaned, and appropriate the money so recovered to the purposes of the Municipality. (*Ib.* sec. 65.) The Municipal Council may issue debentures for the payment of any loan negotiated by them with any such company, in the same manner, and subject to the same conditions, as required by law with regard to the issuing of other debentures. (*Ib.* sec. 66.)

(*p*) The Legislature here, in a few words, have enabled but not required Municipal Councils to pass By-laws for aiding in maintaining any indigent person belonging to or to be found in the Municipality at a public institution, or for granting aid to any charitable institution, or to the resident poor. Though the Legislature have given full authority to Municipal Councils of their own motion to aid the resident poor, they have left a discretion to be exercised in regard thereto. In England the 43 Eliz. cap. 2, makes it the duty of Justices to provide for the relief of the poor. The words used in the English Act are, "shall and may tax, rate and assess," and then provides for overseers of the poor, who have power to call for and administer the necessary funds. We have no such organization in Ontario. It is not therefore competent for our Courts to proceed upon the case of any individual applicant, for it does not rest with the Courts to dictate to Municipal Councils what particular cases of distress call for public relief. (*Per* Robinson, C. J., *In re McDougall and Lobo*, 21 U. C. Q. B. 82; s. c. 7 U. C. L. J. 316.)

(*q*) The B. N. A. Act provides for a decennial census (sec. 8), and the Dominion Legislature has made provision for the taking of the

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*Driving on Roads and Bridges.*

To regulate driving on roads and bridges.

(9.) For regulating the driving and riding of horses and other cattle on highways and public bridges, and for preventing racing, immoderate or dangerous driving or riding thereon. (*r*) 29-30 V. c. 51, s. 296, sub. 26; s. 333, sub. 3; s. 344, sub. 2.

Opening or stopping up drains and water-courses, &c.

(10.) For opening, making, preserving, improving, repairing, widening, altering, diverting, stopping up and pulling down drains, sewers or water-courses, within the jurisdiction of the Council, (*s*) and for entering upon, breaking up, taking or using any land in any way necessary or convenient for the said purposes, subject to the restrictions in this Act contained. (*t*) 29-30 V. c. 51, s. 333, sub. 1.

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decennial census. (33 Vic. cap. 21; 34 Vic. cap. 18.) But it may be that the Municipal Council desire to have a census more frequently, or to check the census of the particular locality made by the Dominion authorities; in either of which events, power is here conferred for taking the requisite census. The census is to be of the inhabitants or of the resident male freeholders and householders in the Municipality.

(*r*) No person is allowed to race with or drive furiously any horse or other animal upon any highway. (Con. Stat. U. C. cap. 56, s. 5.) So every person who has the superintendence and management of any bridge exceeding thirty feet in length, is allowed to put up a notice thereon forbidding persons riding or driving on or over it at a faster rate than a walk (*Ib.* sec. 8); and persons violating any of the provisions of the statute are subject to penalties which the statute imposes. (*Ib.* secs. 6, 10, 11.)

(*s*) It has been held under former statutes that a Municipal Council has no right to bring down water in any quantity upon the land of an individual, and leave the water to stagnate there, without showing that it could not otherwise have been got rid of, and without showing that it was not in the power of the Council to lead the water away from the plaintiff's land after the Council had conducted it there. (See *Brown* v. *Sarnia*, 11 U. C. Q. B. 87; *Perdue and Chinguacousy*, 25 U. C. Q. B. 61; *Rowe* v. *Rochester*, 29 U. C. Q. B. 590.)

(*t*) By the 373rd section it is provided that every Council shall make to the owners or occupiers of, or other persons interested in, real property entered upon, taken or used by the Corporation in the exercise of any of its powers, or injuriously affected by the exercise of its powers, due compensation for any damages (including cost of fencing when required) necessarily resulting from the exercise of such powers, beyond any advantage which the claimant may derive from the contemplated work. It is clear, therefore, that no Municipal Corporation has a legal right to say they may trespass a little upon the property of a private person, doing no unnecessary damage, unless they show it was necessary and convenient for them for the purposes of the road, street or other work. Besides, it should be shown that there was a By-law authorizing the work. (*St. George's Church* v. *County of Grey et al*, 21 U. C. Q. B. 265.) Unless a By-law were

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*Fines and Penalties.*

(11.) For inflicting reasonable fines and penalties (*u*) not shown, the Corporation would be looked upon as trespassers; and to answer, under such circumstances, that they trespassed a little, doing no unnecessary damage, would be no answer at all. (*Ib.*)

Fines and penalties for the neglect of duty.

(*u*) It was at one time supposed that, under power to a Corporation to impose a reasonable fine not exceeding a certain amount, for violation of the provisions of a By-law, the Corporation was bound to fix a certain sum in the By-law, and had no power to reserve a discretion as to the amount within the limits prescribed, and *Wood* v. *Searl*, Bridgman Rep. 139, was cited as an authority for that position. But in a subsequent case, where that case was cited to the Court as an authority for such a position, Parke, B., in giving judgment, said, "The only case we have been able to find bearing on this question is that cited in the argument for the plaintiff—*Wood* v. *Searl*, Bridgman Rep. 139—in which the penalty was such a sum as the Master, Wardens, &c., should assess, not exceeding 40*s.*; but this case is no authority either way, for the By-law was held to be bad, and it might have been so held upon other objections, or upon this. In the absence of any other authority to the contrary, we do not see any objection to this mode of fixing the penalty. It is a certain penalty of £5, with a power of mitigation not below £2, and we do not think this is unreasonable. We therefore think the second objection ought not to prevail." (*Piper* v. *Chappell*, 14 M. & W. 624–648.) Again, assuming the right of the Corporation to so fix a penalty, its power to delegate the discretionary power to a convicting Justice was doubted; Draper, C.J., saying, "The maxim, '*Delegata potestas non potest delegari*,' or, as it is otherwise expressed, '*Delegatus non potest delegare*,' appears to us to apply." (*In re Fennell and Guelph*, 24 U. C. Q. B. 238–243.) But now, whether the fine be fixed in the By-law or not, it is enacted that the convicting Justice "shall award the whole or such part of the penalty or punishment imposed by the By-law, as he sees fit." (Sec. 317.) A By-law without fine or penalty would be in effect nugatory. (*State* v. *Cleveland*, 3 Rh. Is. 117.) So it has been held that Corporations have an implied power to enforce By-laws by the imposition of reasonable fines or penalties. (*Fisher* v. *Harrisburg*, 2 Grant (Pa. Cas.) 291; *Barter* v. *Commonwealth*, 3 Pa. (Pen. & W.) 253; *Zylstra* v. *Charleston*, 1 Bay. S.C. 382.) The fine or penalty should be imposed on the person who violates the By-law, and not, if an unauthorized trader, on the person with whom he deals. (*Cuddon* v. *Eastwick*, 1 Salk. 192; *Fazakerley* v. *Wiltshire*, 1 Stra. 469; Willc. on Corp. 155 Pl. 369.) What is reasonable within the limits prescribed, must depend on circumstances. (*Mobile* v. *Yeulle*, 3 Ala. 137.) A penalty, although small, fixed on every stroke of the hammer which an unauthorized person uses in his trade of a goldsmith, would be unreasonable. (Willc. on Corp. 154, Pl. 368; see also *New York* v. *Ordrenan*, 12 Johns. 122.) The Corporation cannot multiply one offence into many, and punish for each. (See *Crepps* v. *Durden*, Cowp. 640; *Hart* v. *Mayor, &c.*, 9 Wend. 571; *Stokes* v. *New York*, 14 Wend. 87; *New York* v. *Ordrenan*, 12 Johns. 122.) But a By-law fixing one penalty for the first offence, and a larger one for the second, and a still larger one for every subsequent offence, does not appear to be bad. (*Butchers' Co.* v. *Bullock*, 3 B. & P. 434.) Where the penalty is fixed

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exceeding fifty dollars exclusive of costs— (*v*)

(*a*) Upon any person for the non-performance of his duties who has been elected or appointed to any office in the Corporation, (*w*) and who neglects or refuses to accept such office, unless good cause be shown therefor, or to take the declaration of office, and (*x*) afterwards neglects the duties thereof; (*y*) and

(*b*) For breach of any of the By-laws of the Corporation. (*z*) 29-30 V. c. 51, s- 246, sub. 6; 34 V. c. 30, s. 3.

Collecting penalties and costs.

(12.) For collecting such penalties and costs by distress and sale of the goods and chattels of the offender. (*a*) 29-30 V. c. 51, s. 246, sub. 7.

Imprisonment, when allowed, and time of.

(13.) For inflicting reasonable punishment by imprisonment, with or without hard labour, either in a Lock-up House in some Town or Village in the Township, or in the

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by a By-law, it cannot be changed by any authority inferior to that which fixed it. (*The King* v. *Ashwell*, 12 East. 29; *Scarning* v. *Cryers*, 3 Leon. 7.)

(*v*) The limitation is fifty dollars, exclusive of costs. This is the maximum. The Corporation may fix a less but cannot fix a greater fine or penalty for infraction of a By-law. It cannot do indirectly that which it is not allowed directly to do. It cannot, by multiplying into many that which is in reality only one offence, and annexing a penalty to each, evade the statute. (See preceding note.) But where each transaction is really a distinct offence, and may be so declared, and the punishment for each is within the competence of the Corporation, the fines would not be illegal though in the aggregate exceeding fifty dollars, exclusive of costs. (*Heise* v. *Town Council*, 6 Rich. (S. C.) Law. 404; see also *Chicago* v. *Quimby*, 38 Ill. 274.)

(*w*) Every qualified person duly elected or appointed to be a *Mayor*, *Alderman*, *Reeve* or *Deputy Reeve*, *Councillor*, *Police Trustee*, *Assessor* or *Collector*, who refuses to accept office, is subject to a penalty of not more than eighty dollars nor less than eight dollars. (Sec. 218.) This section must be taken to apply to officers other than those for which the Act has made express provision.

(*x*) As to what is "neglect," "refusal" or "good cause" for not accepting, see notes to sec. 218.

(*y*) This section, in providing summarily for the punishment of persons neglecting the duties of office after accepting office, goes beyond the provisions of section 218, to which reference is above made.

(*z*) See note *u* to sub. 11, of this section.

(*a*) The power to enforce the payment of fines by distress *and sale* is one that must be expressly conferred. (*White* v. *Tallman*, 2 Dutch. (N. J.) 67; *Bergen* v. *Clarkson*, 1 Halst. (N. J.) 352; see also *Clerk* v. *Tucket*, 3 Lev. 281; *Lee* v. *Wallis*, 1 Ken. Cas. 292; *Adley* v. *Reeves*, 2 Maule & Sel. 60.)

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County Gaol or House of Correction, for any period not exceeding twenty-one days, for breach of any of the By-laws of the Council, in case of non-payment of the fine inflicted for any such breach, and there being no distress found out of which such fine can be levied, (*b*) except for breach of any By-law or By-laws in Cities, and the suppression of houses of ill-fame, for which the imprisonment may be for any period not exceeding six months, in case of the non-payment of the costs and fines inflicted, and there being no sufficient distress as aforesaid. (*c*) 29-30 V. c. 51, s. 246, sub. 8.

*Temperance Laws.*

(14.) For prohibiting the sale of intoxicating liquors and the issue of licenses therefor, according to the provisions and limitations contained in the Temperance Act of 1864, 27-28 V. c. 18. (*d*) *New.* Enforcing temperance.

(*b*) There is no power conferred to provide in the first instance for imprisonment. The power is to impose the imprisonment in case of non-payment of the fine inflicted, and there being no distress found out of which such fine can be levied. (See note *k* to sec. 318.) It is not usual to provide that a Municipal Corporation shall have power to imprison in the first instance for non-payment of a fine. (See *London* v. *Wood*, 12 Mod. 686; *Clark's Case*, 5 Co. 64; *Bab* v. *Clerk*, Moore, 411; *The King* v. *Merchant Taylors' Co.* 2 Lev. 200; *Chilton* v. *Railway Co.* 16 M. & W. 212; *Barter* v. *Commonwealth*, 3 Pa. Pen. & W. 253; *New Orleans* v. *Costello*, 14 La. An. 37; *Burlington* v. *Kellar*, 18 Iowa, 59.)

(*c*) The ordinany limit of imprisonment in default of payment of fine, or distress for same, is twenty-one days. Unless there be some misprint in this section, there are *two* exceptions:

1. Breach of *any* By-law or By-laws *in Cities;*
2. *And* the suppression of houses of ill-fame.

For such, the imprisonment may be for any period not exceeding six months in case of non-payment, &c.

It may be that the Legislature only intended *one* exception, viz., By-laws for the suppression of houses of ill-fame in Cities. But in this case the words "*and* the suppression" should be read "*for* the suppression," in which case there would be no difficulty. In all probability this is what is intended. A conviction under Con. Stat. Can. cap. 105, for keeping a house of ill-fame or being an inmate of such a house, adjudicating that the accused should pay a fine of fifty dollars forthwith and be imprisoned for three months unless the fine be sooner paid, was held to be illegal. (*In re Slater and Wells*, 9 U. C. L. J. 21; *The Queen* v. *Munro*, 24 U. C. Q. B. 44; see further, *The Queen* v. *Rice*, L. R. 1 Crown Cases, 21.)

(*d*) The Court of Queen's Bench intimated recently that many, if not most, of the provisions of the 27 & 28 Vic. cap. 18, referring to the granting of licenses and the preventing the issuing of licenses,

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*Purchasing Wet Lands.*

Purchase of wet lands from Government

(15.) For purchasing from the Government or any Corporation or person, at a price (in case of Crown Lands, to be

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and for prosecuting and punishing parties for violating the laws made on those subjects, are superseded, if not repealed, by the provisions of the Statutes of Ontario, 32 Vic. cap. 32. (*In re Mottashed and Prince Edward*, 30 U. C. Q. B. 74.) This section, which assumes to enable Municipal Councils of Counties, Townships, Cities, Towns and Incorporated Villages to pass By-laws prohibiting the sale of intoxicating liquors, *according to the provisions and limitations contained* in that Act, may, if constitutional, be held to revive and restore the provisions of the Act, though in conflict with the subsequent statute. What the Court suggested in *In re Mottashed and Prince Edward* was, that the Legislature should repeal those sections of the Act of 1864 which are inconsistent with the Act of 1869. The Legislature, instead of repealing them, has apparently given new life to them. When the 27 & 28 Vic. cap. 18, was passed, there was no doubt of the power of the Legislature to pass it. It was passed before Confederation. But now that the power to pass laws for the regulation of trade and commerce is vested exclusively in the Parliament of the Dominion, there may be some doubt as to the constitutional power of the Local Legislature either itself to pass what is commonly called a prohibitory liquor law or to authorize Municipal bodies to do so. There is a great difference between a regulation and a prohibition. That which in the one case is lawful, *sub modo*, in the other is illegal. The question is whether a prohibitory By-law is not more than a Police regulation. "By the general Police powers of the State, persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health and prosperity of the State." (*Per* Redfield, C. J., in *Thorpe* v. *Rutland & Burlington Railroad Co.*, 27 Vt. 150.) It is much easier to perceive and realize the existence and sources of this power than to mark its boundaries or prescribe limits to its exercise. (*Commonwealth* v. *Alger*, 7 Cush. 84; see also *Commonwealth* v. *Tewksbury*, 11 Met. 55; *Hart* v. *Albany*, 9 Wend. 571; *New Albany and Salem Railroad Co.* v. *Tilton*, 12 Ind. 3; *Indianapolis and Cincinnati Railroad Co.* v. *Kerchaval*, 16 Ind. 84; *Baltimore* v. *The State*, 15 Md. 380; *People* v. *Draper*, 25 Barb. 374; *Ohio and Mississippi Railroad Co.* v. *McClelland*, 25 Ill. 140.) In the United States the exclusive power "to regulate commerce with foreign nations and among the several States and with the Indian tribes" is with Congress. (Story on Const. s. 1056.) Chief Justice Marshall, in *Dartmouth College* v. *Woodward*, 4 Wheat. 518, 629, said that "the framers of the Constitution did not intend to restrain the States in the regulation of their civil institutions adapted for internal government, and that the instrument they have given us is not to be so construed." (See also *Suydam* v. *Moore*, 8 Barb. 358; *Waldon* v. *Renseslaer and Saratoga Railroad Co.*, *Ib.* 390; *Galena and Chicago Railroad Co.* v. *Loomis*, 13 Ill. 548; *Fitchburg Railroad Co.* v. *Grand Junction Railway Co.*, 1 Allen, 552; *Peters* v. *Iron Morriston Railroad Co.*, 33 Mo. 107; *Grannahan* v. *Hannibal, &c., Railroad Co.*, 30 Mo. 546; *Veazie* v. *Mayo*, 45 Me. 560; *Indianapolis, &c., Railroad Co.* v. *Kercheval*, 16 Ind. 84; *Galena, &c., Railroad Co.* v. *Appleby*,

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fixed upon by the Governor in Council, and which price the Governor in Council is hereby authorized to fix), all the wet lands at the disposal of the Crown or such Corporation or

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28 Ill. 283.) Laws prohibiting the sale of intoxicating liquors have, in the United States, been again and again assailed as being contrary to the Constitution of the United States; but their constitutionality appears to have been affirmed by the majority of the Supreme Court of the United States, after appeals from several States, and after most able and exhaustive arguments. (*Thurlow* v. *Massachusetts*, 5 How. 504, 574, 589, 606, 608; see also *Brown* v. *Maryland*, 12 Wheat. 419; *People* v. *Hawley*, 3 Mich. 330; *Reynold*, v. *Geary*, 26 Conn. 179; *Lincoln* v. *Smith*, 27 Vt. 335; *State* v. *Robinson*, 49 Me. 285; *Bradford* v. *Stevens*, 10 Gray, 379; *Bode* v. *The State*, 7 Gill. 326; *Jones* v. *The People*, 14 Ill. 196; *State* v. *Wheeler*, 25 Conn. 290; *Santo* v. *The State*, 2 Iowa, 202; *Commonwealth* v. *Clapp*, 5 Gray, 97.) Indeed, some of the Courts have gone so far as to hold that Municipal Corporations, under a general power to prevent pauperism and crime and the abatement of nuisances, may declare that the act of selling spirituous liquors is a nuisance. (*Goddard* v. *Jacksonville*, 15 Ill. 589; *Jacksonville* v. *Holland*, 19 Ill. 271; *Byers* v. *Olney*, 16 Ill. 35; *Prendergast* v. *Peru*, 20 Ill. 51; *Pekin* v. *Smelzel*, 21 Ill. 464; *Block* v. *Jacksonville*, 36 Ill. 301; *Strauss* v. *Pontiac*, 40 Ill. 301; *Mount Carmel* v. *Wabash*, 50 Ill. 69; see also *Commonwealth* v. *Kendall*, 12 Cush. 414; *Commonwealth* v. *Howe*, 13 Gray, 26; *Reynolds* v. *Geary*, 26 Conn. 179; *Oviatt* v. *Pond*, 29 Conn. 470; *People* v. *Gallagher*, 4 Mich. 244; *State* v. *Prescott*, 27 Vt. 194; *Lincoln* v. *Smith*, *Ib.* 328.) But in one case a learned Judge said, with much force, speaking of nuisances, "It is a doctrine not to be tolerated in this country, that a Municipal Council, without any general laws either of the City or of the State within which a given structure can be shown to be a nuisance, can, by the mere declaration that it is one, subject it to removal by any person supposed to be aggrieved, or even by the City itself. This would place every house, every business, and all the property in the City, at the uncontrolled will of the temporary local authorities." (*Per* Miller, J., in *Yates* v. *Milwaukee*, 10 Wall. 497; see also *Underwood* v. *Green*, 42 N. Y. 140; *Crosby* v. *Warren*, 1 Rich. (S. C.) 385; *Roberts* v. *Ogle*, 30 Ill. 459; *Salem* v. *Railroad Co.*, 98 Mass. 431; *Dingley* v. *Boston*, 100 Mass. 544.) These remarks may, with perfect propriety, be turned against a By-law making the sale of spirituous liquors to a man a nuisance. Whatever doubt there may be as to the constitutionality of a By-law prohibiting the sale of spirituous liquors, there appears to be none as to By-laws regulating its sale. They are looked upon as ordinary Police regulations, such as the State may make or delegate to Municipal bodies to make, in respect to all classes of trades and employments. (*Bode* v. *The State*, 7 Gill. 326; *Bancroft* v. *Dumas*, 21 Vt. 456; *The License Cases*, 5 How. 504; *Thomas* v. *Mount Vernon*, 9 Ohio, 290; *Clintonville* v. *Keeting*, 4 Denio. 341; *City* v. *Haisembrittle*, 2 McMullen, S. C. 233; *City Council* v. *Ahrens*, 4 Strob. (S. C.) 241.) In the last mentioned case, Evans, J., said, "I do not see how it can be supposed that the ordinance forbidding it (spirituous liquor) to be kept in certain places can be said to be an interference with the power of Congress to regulate trade. As well might it be said, that because gunpowder

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person in any such Township; (*e*) and such lands may be sold accordingly to the Corporation of any such Township. 29-30 V. c. 51, s. 345, sub. 5.

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was imported and subject to duty, the State laws, which prohibit vendors keeping it in their stores, were in violation of the Constitution of the United States." Such a By-law must not be inconsistent with the laws of the Dominion regulating either Customs or Excise. (See *Ex parte Harrington* v. *Rochester*, 10 Wend. 547; *People* v. *Morris*, 13 Wend. 325.) The license of the Government to sell spirituous liquors is only an authority to sell according to law. *Licenses Cases*, 5 How. 632; see also *Meeker* v. *Van Rensselaer*, 15 Wend. 397.) The power ought not to be gathered by mere inference. (*Commonwealth* v. *Turner*, 1 Cush. 493; *Dunham* v. *Rochester*, 5 Cow. 462; *Commonwealth* v. *Dow*, 10 Met. 382; *Ex parte Burnett*, 30 Ala. 461; *State* v. *Clark*, 8 Fost. N. H. 176; *State* v. *Ferguson*, 33 N. H. 424; *Intendant* v. *Chandler*, 6 Ala. 89; *Perdue* v. *Ellis*, 18 Geo. 586; *License Cases*, 5 How. 632.) Power is by this Act expressly given to the Council of every Township, Town and Incorporated Village to pass By-laws "*respecting* shop and tavern licenses, and regulating the sale of spirituous, fermented and other manufactured liquors." (Sec. 390, sub. 6; see further, notes to that section.)

(*e*) Municipal Corporations are not in general authorized to deal in lands. The Council of every County, Township, City, Town and Incorporated Village may pass By-laws for obtaining such real and personal property as may be required for the use of the Corporation. (Sub. 1 of this section.) The additional power is here conferred on the Councils of Townships to purchase all the wet lands at the disposal of the Crown, or any Corporation or person. It is now the well settled policy of the Provincial Legislature, that the swamps and wet lands of the Province should be drained. By stat. 36 V. cap. 38, Ont., the Treasurer of the Province is authorized to advance $200,000, to be expended in drainage works. The Commissioner of Public Works may, on the written application of any Municipality asking for drainage works within the Municipality, or along any town-line of such Municipality, undertake and complete the same. (*Ib.* sec. 3.) So on the petition of a majority of all the owners, as shown by the last revised Assessment Roll to be resident on property described in the petition. (*Ib.* sec. 4.) Assessors are to assess all lands and roads benefited by drainage undertaken under the formalities prescribed in the previous section, as if the same had been undertaken on the application of the Municipality. (*Ib.* sec. 5.) Provision is made for the extension of the drainage works from one into another Municipality. (*Ib.* sec. 6.) Lands and roads benefited by the drainage are to be specially assessed therefor. (*Ib.* secs. 7, 8, 9, 10, 15, 16, 17, 18, 19.) Provision is made for appeals from such assessments. (*Ib.* secs. 11, 12, 13.) The Commissioner of Public Works is to give certain information to the Assessors. (*Ib.* sec. 14.) Adjoining Municipalities benefited by drainage are to adjust their differences by arbitration. (*Ib.* secs. 20, 21, 22, 23, 24.) Provision is made for the maintenance of the drainage works after completion. (*Ib.* sec. 25.) A Municipality using a drain as an outlet or otherwise is subject to assessment. (*Ib.* sec. 26.) Permission to use public highways for the spreading of

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(16.) The purchase and draining of such lands shall be one of the purposes for which any such Corporation may raise money, by loan or otherwise, or for which they may apply any of its funds not otherwise appropriated. (*f*) 29-30 V. c. 51, s. 345, sub. 6. Raising money for purchasing and draining same.

(17.) The Corporation of any such Township may possess and hold the land so purchased, and may, whenever they deem it expedient, sell or otherwise depart with or dispose of the same by public auction, in like manner as they may by law sell or dispose of other property, and upon such terms and conditions, and with such mortgages upon the land so sold, or other security for the purchase money or any portion thereof, as they may think most advantageous. (*g*) May hold or dispose of such land.

(18.) The proceeds of the sale of such lands shall form part of the general funds of the Municipality. (*h*) 29-30 V. c. 51, sec. 345, sub. 8. Proceeds of sale.

(19.) For causing any tree, shrub or sapling, growing or planted on any public place, square, highway, street, lane, alley, or other communication under its control, to be removed, if and when such removal shall be deemed neces- Regulations as to trees, shrubs, &c., in public places.

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earth is given. (*Ib.* secs. 27, 28, 29.) It is the duty of the Municipal Councils to collect the arrears due for drainage. (*Ib.* sec. 30.) The assessment is in the nature of a rent charge, and is the first charge on the land. (*Ib.* sec. 31.) Special provision is made for its collection. (*Ib.* secs. 32, 33.) Crown lands are also expressly made subject to the assessment. (*Ib.* sec. 34.) Disputes as to boundaries are to be settled by the Assessors. (*Ib.* sec. 35.) So disputes as to drainage are to be referred to arbitration. (*Ib.* sec. 36.) Special provision is made for the assessment when two or more Municipalities are benefited by the drainage works. (*Ib.* secs. 37, 38, 41.) So for appeals from such assessments. (*Ib.* secs. 39, 40.)

(*f*) Unless power were conferred to drain the wet lands, the purchase of which is authorized by the preceding subsection, the lands would be of little value to the Township Corporation. Here it is declared that the purchase *and* draining of such lands shall be one of the purposes for which any Township Corporation may raise money by loan or otherwise, or for which it may apply any of its funds not otherwise appropriated.

(*g*) The powers to purchase and drain would not be of much value without a power to sell when drained. But the sale can only be by public auction. This is intended as a provision against favouritism. As to the power to foreclose mortgages taken out and sold, see *Orford* v. *Bailey*, 12 Grant, 276.

(*h*) As the purchase money may be taken from any funds not otherwise appropriated, or raised by way of loan or otherwise, payable out of the general funds of the Municipality, it is only right that the proceeds of sale should form part of the general funds of the Municipality.

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sary for any purpose of public improvement; but no such tree, shrub or sapling shall be so removed until after one month's notice thereof shall be given to the owner of the adjoining property, and he be recompensed for his trouble in planting and protecting the same; nor shall such owner, or any pathmaster or other public officer, or any other person, remove or cut down or injure such tree, shrub or sapling, on pretence of improving the public place, square, highway, street, road, lane, alley or other communication or otherwise, without the express permission of the Municipal Council having the control of the public place, square, highway, street, road, lane, alley or other communication; (*i*) and any Council may expend money in planting and preserving shade and ornamental trees upon any public place, square, highway, street, road, lane, alley or other communication within the Municipality, and may grant sums of money to any person or association of persons to be expended for the same purposes. (*j*) 34 V. c. 31, ss. 3 & 5.

*This section has been amended by adding thereto subs. 26, 27, 28, 29 and 30 of s. 379 of this Act.* 37 V. c. 16, s. 16.

(*i*) The policy of the Municipal law is to encourage the planting and growth of trees in public highways, squares and streets, for purposes of ornament or shade. Each such tree is made the property of the adjoining proprietor. (34 Vic. cap. 31, s. 1.) But no such tree is to be so planted that the same may be or become a nuisance in the highway, or obstruct the fair and reasonable use of the same. (*Ib.* sec. 2.) The removal, under the section here annotated, is only to take place when necessary for any purpose of public improvement. Besides, it is not to take place until one month's notice thereof shall be given to the owner of the adjoining property, *and* he be recompensed for his trouble in planting and protecting the tree. It is not in the power of the owner, pathmaster, or other officer or person, to cut down a tree without the express permission of the Municipal Council having the control of the public place, &c., where the tree is standing.

(*j*) In 1871 the Legislature of Ontario for the first time enabled a Municipal Council to expend money in the planting and preserving of shade and ornamental trees upon the highways within the Municipality (34 Vic. cap. 31, s. 5), and to grant sums of money to any person, or association of persons, to be expended for such a purpose. (*Ib.*) The latter part of the section under consideration is a re-enactment of the last mentioned provisions. Besides, Municipal Councils are empowered to allow to any person who shall plant any fruit trees, or any trees, shrubs or saplings suitable for affording shade, on any highway within the Municipality, in abatement of statute labour or out of the general funds, a sum of not less than twenty-five cents for every tree so planted. (Sec. 379, sub. 20.) The 34 Vic. cap. 31, s. 4, also provides that any person who—

1. Shall tie or fasten any animal to any such tree, shrub or sapling;

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*Compensation for Lands taken.*

**373.** Every Council shall make to the owners or occupiers of, or other persons interested in, real property entered upon, taken or used by the Corporation in the exercise of any of its powers, or injuriously affected by the exercise of its powers, (*a*) due compensation for any damages (including

Owners of lands taken by Corporation, &c., to be compensated.

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2. Shall injure or destroy, or suffer or permit any animal in his charge to injure or destroy the same;

3. Shall remove any such tree, shrub or sapling;

4. Shall receive the same, knowing it to have been so removed;

Shall, upon conviction before a Justice of the Peace, forfeit and pay such sum of money, not exceeding twenty-five dollars, besides costs, as the Justice may award, to be levied of his goods, and in default, imprisonment for thirty days. (See further, sub. 20 of sec. 379.)

(*a*) An interference with the enjoyment of property belonging to another, *prima facie* gives a right of action. This being so, the right to maintain the action exists, unless shown to have been taken away by Act of Parliament. The burden of showing that it has been taken away rests upon those who interfere with the enjoyment of the property of others. (See *Clowes* v. *Staffordshire Potteries Water Works Co.* L. R. 8 Ch. Ap. 125.) But social duties and obligations are paramount to individual rights and interests. In all civilized countries there is what is called the power of eminent domain. By this is meant the right of the public to appropriate private property for public uses. This right is generally subject to the limitation that private property shall not be taken for public use without due compensation. Such is one of the limitations in the written constitution of the United States. Such is also one of the generally understood limitations in the unwritten constitution of Great Britain. "It is said this is for the general benefit of the inhabitants, &c., and it is only opposed by a few interested individuals. The usual answer to this kind of argument is, that if it is for the general benefit of the inhabitants to take from a few interested individuals their property, let the public pay the interested individuals for that of which they deprive them." (*Per* Richards, C.J., in *Burritt and Marlborough*, 29 U.C.Q.B. 119-131; see further, *In re matter of Albany Street*, 11 Wend. 148; *Embury* v. *Conner*, 3 Comst. 511; and note *z* to sub. 19 of sec. 379.) The Legislature may, under proper restrictions, delegate this power of eminent domain for particular purposes to Municipal Corporations and other Corporations essentially public in their nature and ends. (*People* v. *Smith*, 21 N.Y. 595; *Willson* v. *Blackbird Creek Marsh Co.*, 2 Pet. 251; *West River Bridge Co.* v. *Dix*, 6 How. 507; *Bloodgood* v. *Railroad Co.*, 18 Wend. 9; *Mercer* v. *Railroad Co.*, 36 Pa. St. 99; *Commonwealth* v. *Charlestown*, 1 Pick. 180; *Scudder* v. *Trenton, &c. Falls Co.*, Saxt. (N.J.) 694; *Shaffner* v. *St. Louis*, 31 Mo. 264; *Harbeck* v. *Toledo*, 11 Ohio St. 219; *Swan* v. *Williams*, 2 Mich. 427; *Embury* v. *Conner*, 3 Comst. 511; *Alexander* v. *Baltimore*, 5 Gill. 383; *West* v. *Blake*, 4 Blackf. (Ind.) 234.) The purposes for which private property is to be appropriated should be specified in the Act delegating the power. (*In re Claiborne*, 4 La. An. 7; *In re Exchange Alley*, 4 La. An. 4; *East St. Louis* v. *St. John*, 47 Ill. 463; *Kane* v. *Baltimore*, 15 Md. 240.) Such an Act, as being an

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cost of fencing when required) necessarily resulting from the exercise of such powers, beyond any advantage which the claimant may derive from the contemplated work; (*b*)

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interference with the rights of property, must be strictly construed. (*Dennis* v. *Hughes*, 8 U. C. Q. B. 444.) Doubts with respect to what lands are authorized to be taken are generally given in favour of the land-owner. (*Webb* v. *Manchester and Leeds Railway Co.*, 4 M. & Cr. 116; *Simpson* v. *South Staffordshire Water Works Co.*, 11 L.T.N.S. 411, 12 L.T. N.S. 360.) If there be no doubt as to the land authorized, &c., the conditions precedent should be strictly pursued. (*Shaffner* v. *St. Louis*, 31 Mo. 264; *Mayor, &c.* v. *Long*, *Ib.* 369; *Dyckman* v. *New York*, 1 Seld. 439; *Harbeck* v. *Toledo*, 11 Ohio St. 219; *Cincinnati* v. *Combs*, 16 Ohio, 181 (1847); *Mitchell* v. *Kirkland*, 7 Conn. 229; *Nichols* v. *Bridgeport*, 23 Conn. 189; *Judson* v. *Bridgeport*, 25 Conn. 426; *Van Wickle* v. *Railroad Co.*, 2 Green (N. J.) 162; *Adams* v. *Railroad Co.*, 10 N.Y. 328; *People* v. *Brighton*, 20 Mich. 57; *Kidder* v. *Peoria*, 29 Ill. 77; *Bennett* v. *Buffalo*, 17 N.Y. 383; *Hunt* v. *Utica*, 18 N.Y. 442; *Kyle* v. *Malin*, 8 Ind. 34; *Street Case*, 16 La. An. 393.) Notice of some kind should be given to the party whose property is to be appropriated. (*Harbeck* v. *Toledo*, 11 Ohio St. 219; *Baltimore* v. *Bouldin*, 23 Md. 328; *McMicken* v. *Cincinnati*, 4 Ohio St. 394; *Molett* v. *Keenan*, 22 Ala. 484; *Darlington* v. *Commonwealth*, 41 Pa. St. 68; *Nichols* v. *Bridgeport*, 23 Conn. 189; *Cruger* v. *Railroad Co.*, 12 N. Y. 190; *Myrich* v. *La Crosse*, 17 Wis. 442: *Rathbun* v. *Acker*, 18 Barb. 393; *Risley* v. *St. Louis*, 34 Mo. 404; *Welker* v. *Potter*, 18 Ohio St. 85; *Stewart* v. *Board of Police*, 25 Miss. 479; *Palmyra* v. *Morton*, 25 Mo. 593; *Swan* v. *Williams*, 2 Mich. 427.) In the absence of statutory provision to the contrary, the Corporation appropriating the property must pay the compensation and expenses connected therewith. (*Morris* v. *Chicago*, 11 Ill. 650; *Trustees of Illinois and Michigan Canal* v. *Chicago*, 12 Ill. 403; see also *Dennis* v. *Hughes*, 8 U.C. Q.B. 444; *Lafferty* v. *Stock*, 3 U. C. C. P. 1.) But a provision directing the expenses to be paid by some persons especially interested in the proposed work, is not illegal. (*Fisher* v. *Vaughan*, 10 U. C. Q. B. 492.)

(*b*) The question is, what damage will the owner sustain by reason of his property being entered upon, taken or used (according to the fact) by the Corporation? If *all* his property be taken by the contemplated work, he should receive pay for the value of his land. (*In re Furman Street*, 17 Wend. 650; *William and Anthony Streets*, 19 Wend. 678.) If *part* only be taken, the question arises, how much the remaining part will be benefited by the contemplated work; and that, whatever it may be, ought to be deducted from the value of the part taken. (*Meacham* v. *Railroad Co.*, 4 Cush. 291; *Dickenson* v. *Fitchburg*, 13 Gray, 546; *Upton* v. *Railroad Co.*, 8 Cush: 600; *Farewell* v. *Cambridge*, 11 Gray, 413; *Robbins* v. *Railroad Co.*, 6 Wis. 636; *Dwight* v. *County Commissioners of Hampden*, 11 Cush. 201; *Howard* v. *Providence*, 6 Rh. Is. 514.) "The compensation, under the statute, is for damages resulting from the taking of the land: the award, therefore, must be taken to be for so much as the property of the claimant was thereby reduced in value." (*Per* Spragge, C., in *Dunlop* v. *York*, 16 Grant, 216–224.) This raises the question as to the title of the claimant. It is not to be assumed that the person in possession is the absolute owner of the land. He may not have any title, an

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and any claim for such compensation, if not mutually agreed upon, shall be determined by arbitration (*c*) under this Act. 29-30 V. c. 51, s. 325.

Differences to be determined by arbitration.

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imperfect title, or a title subject to encumbrances. Unless a charge of the land were made a charge upon the compensation, the security would be impaired at the expense of the chargee. The money becomes as it were impressed with the trusts to which the land was subject, and stands in its place. (*Dunlop* v. *York*, 16 Grant, 216; *In re East Lincolnshire R. Act*, 1 Sim. N. S. 260; *Greaves* v. *Newfoundland Co.*, 23 L. T. 53; *In re Cuckfield Burying Board*, 19 Beav. 153; *Lippincott* v. *Smyth*, 2 L. T. N. S. 79; *Hall* v. *London, Chatham and Dover Railway Co.*, 14 L. T. N. S. 351; *Cooper* v. *Gostling*, 9 L. T. N. S. 77; see further, note *a* to sec. 425.)

(*c*) Where the statute gives a specific remedy to the owner, and the land be taken possession of under the provisions of the statute or with the consent of the owner, the latter is restricted to the method given by the statute for securing compensation. (*Cotton* v. *Hamilton and Toronto Railway Co.*, 14 U. C. Q. B. 87; *Rankin* v. *Great Western Railway Co.*, 4 U. C. C. P. 463; *Grimshawe* v. *Grand Trunk Railway Co.*, 19 U. C. Q. B. 493; *Welland* v. *Buffalo and Lake Huron Railway* Co., 30 U. C. Q. B. 147; s. c. 31 U. C. Q. B. 539; *Jones* v. *Stanstead, Shefford and Chambly Railway Co.*, L. R. 4 P. C. 98, 120; *McLean* v. *Great Western Railway Co.*, 33 U. C. Q. B. 198.) If the land be taken without the consent of the owner, otherwise than according to the statute, it would seem that the owner may maintain trespass or ejectment for the assertion of his rights at common law. (*Doe d. Hutchinson* v. *Manchester, Bury and Rosendale Railway Co.*, 14 M. & W. 687; *Smalley* v. *Blackburn Railway Co.*, 2 H. & N. 158; see also *Floyd* v. *Turner*, 23 Texas, 293; *Cushman* v. *Smith*, 34 Maine, 247; *Sower* v. *Philadelphia*, 35 Pa. St. 231.) Where the land is taken as the statute prescribes, due compensation is to be made, and the amount, if not mutually agreed upon, is under this section to be determined by arbitration. The Court set aside an award against a Municipal Corporation as to damages in favour of a person through whose land a road had been opened, where it appeared that no notice had been given to the Municipal Corporation at the meeting of the arbitrators. (*In re Johnson and Gloucester*, 12 U. C. Q. B. 135. A Municipal Council by By-law opened a road across plaintiff's property, and arbitrators were appointed, one by the Council, one by the plaintiff, and the third by the Judge of the County Court, to determine what compensation should be paid him. Afterwards a resolution was passed by the Council that the arbitrators so chosen should be instructed to take into consideration the damage to the plaintiff's crops, so that all differences might be settled, and they awarded separate sums for the opening of the road and for damages. *Held*, in an action of debt on the award, that the Corporation could not, under the plea of no award, dispute the arbitrators' authority to award the latter sum. (*Hodgson* v. *Whitby*, 17 U. C Q. B. 230.) Where in a similar action it appeared that plaintiff named one arbitrator and the Reeve another, and they being unable to agree on the third, the County Judge appointed the third, and the first and third mentioned arbitrators made an award in favour of plaintiff for £40 for compensation for land taken for a road, it was held that



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*Titles to Land of Infants, &c., how acquired.*

How title acquired to lands when owned by corporations, tenants in tail, vested in trustees, &c.

**374.** In the case of real property which a Council has authority under this Act to enter upon, take or use without the owner's consent, (*d*) Corporations, tenants in tail or for life, guardians, committees and trustees, shall, on behalf of themselves, their successors and heirs respectively, and on behalf of those they represent, whether infants, issue unborn, lunatic, idiots, married women or others, have power to act, as well in reference to any arbitration, notice and action under this Act, as in contracting for and conveying to the Council any such real property, or in agreeing as to the amount of damages arising from the exercise by the Council of any power in respect thereof; (*e*) and in case there is no such person who can so act in respect to such real property, or in case any person interested in respect to any such real

If there be no party who can convey, &c.

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plaintiff was entitled to recover. (*Harpel* v. *Portland*, 17 U. C. Q. B. 455.) Afterwards the Council called another meeting of the arbitrators, when all three attended, and the two first mentioned arbitrators made an award giving plaintiff only £3 10*s*. It was held that the second award was invalid. (*Ib.*; see further, sec. 283 & 284.)

(*d*) See note *a* to sec. 373.

(*e*) The object of this section is to enable the Corporation to get a good title to the land required, and to get that title if necessary from persons not having themselves the complete title. With this object, it is declared that Corporations, tenants in tail or for life, guardians, committees and trustees, shall have power to act, not simply on behalf of themselves, their successors and heirs respectively, but "on behalf of those they represent, whether infants, issue unborn, lunatic, idiots, married women or others." It has been held, under a similar Act, that a tenant in tail, under an Act of Parliament, might sell and convey so as to bar his heirs in tail and the remaindermen, notwithstanding his statutory disability to bar the entail. (*In re Cuckfield Burial Board*, 19 Beav. 153.) So where land stood limited to one life, with remainder to a husband and wife in fee, it was held that the interest of the married woman would pass. (*Cooper* v. *Gostling*, 9 L. T. N. S. 77.) Where the contract was made with a person of unsound mind—not, however, found so by inquisition—the money paid was held to be paid in respect of land belonging to a person seized in fee and competent to sell. (*In re East Lincolnshire Railway Co.*, 1 Sim. N. S. 260; but see *Midland Railway Co.* v. *Oswin*, 1 Col. C. C. 74; s. c., 3 R. & C. C. 497. Where the land was in mortgage, and the mortgagor of unsound mind, the Court, in the absence of a committee, appointed a guardian *ad litem* to appear for the lunatic. (*Greaves* v. *Great Northern Railway Co.*, 23 L. T. 53; see also *Lippincott* v. *Smyth*, 2 L. T. N. S. 79, 8 W. R. 336; *Hall* v. *London, Chatham and Dover Railway Co.*, 14 L. T. N. S. 351; *Slipper* v. *Tottenham and H. J. Railway Co.*, L. R. 4 Eq. 112; *Governors of St. Thomas' Hospital* v. *Charing Cross Railway Co.*, 1 J. & H. 400; *In re Taylor*, 1 McN. & G. 210; *In re Briscoe*, 2 De G. J. & S. 249; *In re Walker*, 7 R. & C. C. 129.)

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property is absent from this Province, or is unknown, or in case his residence is unknown, or he himself cannot be found, the Judge of the County Court for the County in which such property is situate may, on the application of the Council, appoint a person to act in respect to the same for all or any of the said purposes. (*f*) 29-30 V. c. 51, s. 326.

Application, &c., of purchase money where party has not an absolute estate in the property.

**375.** In case any party acting as aforesaid has not the absolute estate in the property, (*g*) the Council shall pay to him the interest only at six per centum per annum on the amount to be paid in respect of such property, and shall retain the principal to be paid to the party entitled to it whenever he claims the same, and executes a valid acquittance therefor, unless the Court of Chancery, or other court having equitable jurisdiction in such cases, do in the meantime direct the Council to pay the same to any person or into court; (*h*) and the Council shall not be bound to see to the application of any interest so paid, or of any sum paid under the direction of such court. (*i*) 29-30 V. c. 51, s. 327.

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(*f*) The jurisdiction of the County Judge only arises in case—

1. There is no person who can so act.

2. The person interested is absent from the Province, is unknown, or residence unknown, or he himself cannot be found.

If there be any person known who can be said, within the meaning of the first part of the section, to represent others, dealings should be had with him.

(*g*) See note *e* to sec. 374.

(*h*) A railway company agreed to pay a landowner, tenant for life, a sum of money for the benefit of him or other the owner for the time being, for indemnifying him from the expense of making a new road, &c., and as a compensation for the annoyance which he or such other owners might sustain in consequence of the construction of the railway; and the company agreed to pay a further sum as the price of the land taken. Both sums were paid into court. The application of the tenant for life for the absolute payment to him of the first sum was refused. The costs of the road, &c., were paid out of it, and the rest invested. (*Re Duke of Marlborough's Estates*, 13 Jur. 738; see also *Pole* v. *Pole*, 2 Dr. & Sm. 420, and *Earl of Shrewsbury* v. *North Staffordshire Railway Co.*, L. R. 1 Eq. 593.)

(*i*) It was a rule in equity that a person paying money to a trustee, &c., is bound to see to the application of the money. This has been found to work such hardship, that as between individuals it is now enacted that a person paying money upon an express or implied trust is not bound to see to the application or be answerable for the misapplication thereof, unless the contrary is expressly declared by the instrument creating the trust. (Con. Stat. U. C. cap. 90, sec. 9.)

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Purchase money subject to charges on property.

**376.** All sums agreed upon, or awarded in respect of such real property, shall be subject to the limitations and charges to which the property was subject. (*k*) 29-30 V. c. 51, s. 328.

*Expenses of Erecting Fences, &c.*

Mode of compelling performance of certain matters directed to be done by council, &c.

**377.** Whenever any Municipal Council has any authority to direct, by By-law or otherwise, that any matter or thing should be done by any person or Corporation, such Council may also, by the same or another By-law, direct that in default of its being done by the party, such matter or thing shall be done at the expense of the party in default, and may recover the expense thereof, with costs, by action or distress; (*l*) and,

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(*k*) In the absence of special clauses for that purpose, the effect of a provision enabling a person under disability, &c., to convey land for some authorized public purpose, is not to alter the course of devolution of property without the consent of the owner; and therefore if a Municipal Council, railway company, &c., contract with incapacitated persons for the purchase of land, the money is in equity to be considered as real and not as personal estate. (*Midland Counties Railway Co.* v. *Oswin*, 8 Jur. 138.) Money paid into court by a railway company for land taken from a person who was in a state of mental imbecility, and who continued in that state until his death, but was not the subject of a commission of lunacy, was ordered after his death not to be reinvested in or considered as land, but to be paid to his executors. (*In re East Lincolnshire Railway Act*, 1 Sim. N. S. 260.) Money paid into court for land taken under the compulsory powers of the English Act 5 & 6 Wm. IV. cap. 69, for a Poor Law Union, during the life of a tenant for life, who by the failure of intermediate limitations became tenant in fee simple, passed as real estate to his heir. (*In re Horner's Estate*, 16 Jur. 1063.) Where the purchase money of land, taken under the compulsory powers of an Act of Parliament for public purposes, is paid into court subject to be reinvested in the purchase of land, free of expense to the parties beneficially interested, on their petition, it is impressed with real uses, and is *prima facie* to be treated as real estate. (*In re Stewart's Estate*, 16 Jur. 1063.) If the person absolutely entitled to money for land has a right to elect to take it as personalty, a mere acquiescence in its remaining invested in consols during his life, and his will, by which he bequeaths personal estate only, and does not devise realty, are not such proofs of election as to prevent the funds descending on his death to his heirs. (*Ib.*) See further, *Dunlop* v. *York*, 16 Grant, 216.

(*l*) The usual penalty for non-compliance with a By-law is a fine. (See sec. 372, sub. 11.) Power to enforce the provisions of a By-law otherwise than by fine must be expressly given. (See notes to sub. 11 of sec. 372.) But where the object of the By-law is really that somebody should do the thing required, power to permit the thing to be done at the expense of the party in default is a reasonable one, and is here expressly given. In the case of By-laws for the removal of snow such a power has for a long time existed. (See sec. 384,

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in case of non-payment thereof, the same shall be recovered in like manner as Municipal rates. (*m*) *New.*

DIVISION II.—POWERS OF COUNCILS OF COUNTIES, CITIES, TOWNS AND INCORPORATED VILLAGES.

**378.** The Council of every County, City, Town and Incorporated Village may pass By-laws for the following purposes :— By-laws may be made for—

*Harbours, Docks, &c.*

(1.) For regulating or preventing the encumbering, injuring or fouling, by animals, vehicles, vessels or other means, of any public wharf, dock, slip, drain, sewer, shore, bay, harbour, river or water ; (*n*) The cleanliness of wharves, docks, &c.

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sub. 41.) The power is now extended to all cases wherever a Municipal Corporation has authority, by By-law *or otherwise*, to direct that "*any* matter or thing" should be done by "*any* person or Corporation." Suffering a party wall of less than the requisite thickness to remain, is not *per se* "a continuing offence." The more appropriate remedy is the removal of the structure at the expense of the owner, where the By-law permits of such a course being adopted. (See *Marshall* v. *Smith*, L. R. 8 C. P. 416.)

(*m*) Municipal rates may be recovered either by action or distress. But in either case there is a Roll showing the person rated and for how much he is rated. This is, as it were, the judgment against him for the amount. No provision is here expressly made for the placing of the name of the person in default on the Roll. Whether such a power is intended remains to be decided. The section is new.

(*n*) All powers of Municipal Corporations over public wharves, docks, slips, &c., must be derived from the Legislature. (*Snyder* v. *Rockport*, 6 Ind. (Porter) 237; *Carrollton Railroad Co.* v. *Winthrop*, 5 La. An. 36.) The Legislature of Ontario has no power to make laws as to navigation and shipping. (B. N. A. Act, s. 91, sub. 10.) "Mr. Crompton presses upon us that Acts relating to trade and navigation have not a legal but as it were a sort of parliamentary meaning, by which they are restricted so far as not to include the Merchant Seamen's Act, and that they form as it were a code which takes them out of the general law of the land. In some cases that may be possibly true, but we are called upon to look to the plain and ordinary meaning of this Act of Parliament," &c. (*Per* Pollock, C. B., in *Seaman's Hospital* v. *Liverpool*, 4 Ex. 180–184.) According to the plain and ordinary meaning of this subsection, "the regulating or preventing the encumbering, injuring or fouling by animals, vehicles, vessels or other means, of any public wharf," &c., cannot be held otherwise than matter of municipal concern. The welfare and good government of a Municipality demands that things likely to be injurious to health, and, as it were, nuisances, should, under certain restrictions, be prevented, and, if they cannot be prevented, that they should be so regulated as to be as little hurtful to the public as consistent with their existence. The power is restricted to public wharves, &c. Whether a wharf can be said to be public or private depends upon circumstances; such as the purposes for which it was built, the uses

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The removal of door-steps, &c., obstructing wharves, &c.

(2.) For directing the removal of door-steps, porches, railings, or other erections, or obstructions projecting into or over any wharf, dock, slip, drain, sewer, bay, harbour, river or water, or the banks or shores thereof, (*o*) at the expense of the proprietor or occupant of the property connected with which such projections are found; (*p*)

The making, &c., of wharves, docks, &c.

(3.) For making, opening, preserving, altering, improving and maintaining public wharves, docks, slips, shores, bays, harbours, rivers or waters and the banks thereof; (*q*)

Regulating harbours, beacons, wharves, elevators, &c.

(4.) For regulating harbours; for preventing the filling up or encumbering thereof; for erecting and maintaining the necessary beacons, and for erecting and renting wharves, piers and docks therein, and also floating elevators, derricks, cranes and other machinery suitable for loading, discharging

Vessels, &c.

or repairing vessels; for regulating the vessels, crafts and rafts arriving in any harbour; (*r*) and for imposing and

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to which applied, the place located, and the character of the structure, &c. (*Dutton* v. *Strong*, 1 Black. U. S. 23.)

(*o*) See preceding note.

(*p*) See note *l* to sec. 377.

(*q*) The preceding sections relate to the regulation, for the good of the public, of public wharves, docks, slips, &c., but this does more. It enables the Municipal Corporation to make, open, preserve, alter, improve, and maintain public wharves, &c. The charter of a city authorized it to establish wharves and public landings, to fix the rate of wharfage, and to regulate the anchorage and mooring of all boats within the city. *Held*, that the city had the power to forbid a person owning a lot abutting on the river, and on which no wharf or public landing had been established, to use such lot as a wharf or landing without the permission of the city and the payment of wharfage. (*Dubuque* v. *Stout*, 32 Iowa, 80; s. c. 7 Am. Rep. 171.) When a Municipal Corporation are riparian owners they have, it is said, an implied authority to erect wharves, &c. (See *Murphy* v. *City Council*, 11 Ala. 586; *Boston* v. *Lecraw*, 17 How. (U. S.) 426; *Commonwealth* v. *Roxbury*, 9 Gray, 514–519; *Baltimore* v. *White*, 2 Gill. Md. 444.)

(*r*) The duty of those having control of a harbour is, so long as it is open to the public, to have it reasonably safe for the public use, and this whether tolls are collected or not for the use of it. (*Parnaby* v. *Lancashire Canal Co.* 11 A. & E. 223; *Metcalfe* v. *Hetherington*, 11 Ex. 257; s. c. 5 H. & N. 719; *Gibbs* v. *Liverpool Docks*, 3 H. & N. 164; s. c. L. R. 1 H. L. C. 93, 104, 122; *Longmore* v. *Great Western Railway Co.* 35 L. J. C. P. 135; *Francis* v. *Cockrell*, L. R. 5 Q. B. 184; *Webb* v. *Port Bruce Harbour Co.* 19 U. C. Q. B. 626; *Coe* v. *Wise*, L. R. 1 Q. B. 711; *Winch* v. *Conservators of the Thames*, L. R. 7 C. P. 471; see also *Pittsburg* v. *Grier*, 22 Pa. St. 54; *Eastman* v. *Meredith*, 36 N. H. 284–295; *People* v. *Albany*, 11 Wend. 539; *Buckbee* v. *Brown*, 21 Wend. 110; see further, *Sweeney*

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collecting such reasonable harbour dues thereon as may serve to keep the harbour in good order, and to pay a Harbour Master. (*s*) 29-30 V. c. 51, s. 296, sub. 1–4; 31 V. c. 30, s. 43. Harbour dues.

DIVISION III.—POWERS OF COUNCILS OF TOWNSHIPS, CITIES, TOWNS AND INCORPORATED VILLAGES.

**379.** The Council of every Township, City, Town or Incorporated Village (*a*) may pass By-laws. By-laws may be made for—

*Electoral Divisions.*

(1.) For dividing the Wards of such City or Town, or for dividing such Township or Village into two or more convenient Electoral Divisions, and for establishing polling places therein, and may from time to time repeal or vary the same, (*b*) and such Electoral Divisions shall be made, or varied whenever the electors in any Ward, Township, Village or Division exceed two hundred, and shall be made and varied in such a manner that the number of electors in the several Electoral Divisions shall not exceed the said number of two hundred; *Vide* 29-30 V. c. 51, s. 278. Dividing city or town into wards, &c. And townships and villages into electoral divisions, &c.

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v. *Port Burwell Harbour Co.*, 17 U. C. C. P. 574; reversed, 19 U. C. C. P. 376; *Berryman* v. *Port Burwell Harbour Co.*, 24 U. C. Q. B. 34.)

(*s*) It is not clear that the Local Legislature can enable a Municipal Corporation to impose harbour dues, for such is certainly an interference with shipping. (See B. N. A. Act, s. 91, sub. 10.) But assuming the power to exist, it cannot be exercised for purposes of revenue. The power is here conferred in its lowest form, viz., to impose and collect such *reasonable* harbour dues *as may serve to keep the harbour in good order, and to pay the harbour master.* (See *In re Campbell and Kingston*, 14 U. C. C. P. 285.) If the wharf, &c., be the property of the city, it may be that the right to impose and collect tolls would be held to be a mere incident of the ownership of property. (See note *q* to sec. 378.) But the right to erect *public* wharves and to demand tolls for their use would appear to be a franchise requiring competent legislative authority. (*People* v. *Broadway Wharf Co.*, 31 Cal. 33; *Wharf Case*, 3 Bland. Ch. (Md.) 383; *Wiswall* v. *Hall*, 3 Paige Ch. 313; *Thompson* v. *New York*, 11 N. Y. 115.)

(*a*) *Counties* not embraced within this section.

(*b*) The powers here conferred are for—

1. Dividing the Municipality into two or more Electoral Divisions;
2. Establishing Polling Places therein;
3. And may from time to time to time repeal or vary the same.

Under circumstances stated it is made obligatory to create Electoral Divisions. The circumstances are, whenever the electors in any Ward, Township, Village or Division exceed two hundred. In such a case it is made the duty of the Council so to vary the Electoral Divisions as not to exceed two hundred electors in each Electoral Division. (See note *h* to sec. 189.)

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Disqualifying electors in arrears for taxes.

(2.) For disqualifying any elector from voting at Municipal elections who has not paid all Municipal taxes due by him on or before the fourteenth day of December next preceding the election; (c)

*Billiard or Bagatelle Tables.*

Licensing and regulating the use of billiard and bagatelle tables.

(3.) For licensing, regulating and governing all persons who, for hire or gain, directly or indirectly, keep or have in their possession or on their premises any billiard or bagatelle table, or who keep or have a billiard or bagatelle table in a house or place of public entertainment or resort, whether such billiard or bagatelle table is used or not, and for fixing the sum to be paid for a license so to have or keep such billiard or bagatelle table, and the time such license shall be in force; (d) 29-30 V. c. 51, s. 264, sub. 1.

*Victualling Houses, &c.*

Victualling houses, &c., number and regulation of.

(4.) For limiting the number of and regulating victualling houses, ordinaries, and houses where fruit, oysters, clams or victuals are sold, to be eaten therein, and all other places for reception, refreshment or entertainment of the public; (e) 29-30 V. c. 51, s. 264, sub. 2.

License and fee for same.

(5.) For licensing the same when no other provision exists therefor, and for fixing the rates of such licenses (f) not exceeding twenty dollars; 29-30 V. c. 51, s. 264, sub. 3.

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(c) See note *o* to sec. 77.

(d) From a very early period in the history of the Province, persons keeping billiard tables for hire have been subject to Legislative control. (Stat. 50 Geo. III. cap. 6; see also *Church q.t.* v. *Richards*, 6 U. C. Q. B. 562.) In some instances power was given to *suppress* such a use of billiard tables. (See *The King* v. *Home District*, 4 Q. B. O. S. 9; see further, *People* v. *Sergeant*, 8 Cow. 139.) The power here conferred is only to *license*, *regulate* and *govern*. Power to license or regulate does not confer power to suppress. (See *Yates* v. *Milwaukee*, 10 Wall. 497; see further, note *x* to sub. 18 of this section.)

(e) It was held that under a general power to pass By-laws "for the *well-being* of the City," there was power to regulate restaurants and other places of public resort. (*State* v. *Freeman*, 38 N. H. 426; see also *State* v. *Clark*, 8 Fost. (N. H.) 176; *Morris* v. *Rome*, 10 Geo. 532; *Hudson* v. *Geary*, 4 Rh. Is. 485.)

(f) Exacting payment of a fee for a license to be allowed to follow a particular vocation within a Municipality is not the imposition of a tax. (*City* v. *Clutch*, 6 Iowa, 546; *Mobile* v. *Yuille*, 3 Ala. 137; *Boston* v. *Schaffer*, 9 Pick. 415: see also *Cincinnati* v. *Bryson*, 15 Ohio, 625; *New Orleans* v. *Turpin*, 13 La. An. 56; *Municipality* v.

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*Schools.*

(6) For obtaining such real property as may be required for the erection of Public School houses thereon, and for other Public School purposes, (*g*) and for the disposal thereof when no longer required; (*h*) and for providing for the establishment and support of Public Schools according to law; (*i*) 29-30 V. c. 51, s. 269, sub. 2. Acquiring land for public schools, &c.

*Cemeteries.*

(7.) For accepting or purchasing land for public Cemeteries, as well within as without the Municipality, but not within any City, Town or Incorporated Village, and for laying out, improving and managing the same; but no land shall be accepted or purchased for such purpose except by a By-law declaring in express terms that the land is appropriated for a public Cemetery and for no other purpose; and thereupon such land, although without the Municipality, shall become part thereof, and shall cease to be a part of the Municipality to which it formerly belonged; and such By- Acquiring land for cemeteries, &c. Proviso.

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*Dubois*, 10 La. An. 56; *Charity Hospital* v. *Stickney*, 2 La. An. 550; *Carrol* v. *Mayor, &c.*, 12 Ala. 173; *Mayor, &c.* v. *Hartridge*, 8 Geo. 23.) Under a power "to license, regulate and restrain amusements," it was considered there was power to exact payment of a specific sum for the privilege, this being considered as a means necessary to the regulation of them. (*Hodges* v. *Mayor*, 2 Hump. (Ten.) 61; see also *Carter* v. *Dow*, 16 Wis. 298; *Tenny* v. *Lenz*, *Ib.* 566; *Dunham* v. *Rochester*, 5 Cow. 462.) So under a power to license "on such terms and conditions as may be just and reasonable." (*Boston* v. *Schaffer*, 9 Pick. 419; but see *Commonwealth* v. *Stodder*, 2 Cush. 562, 527.) But power merely "to make By-laws *relative* to hucksters, grocers, and victualling shops" is not sufficient to enable the Municipality to exact money for a license. (See *Dunham* v. *Rochester*, 5 Cow. 462; *Commonwealth* v. *Stodder*, 2 Cush. 562; *Mays* v. *Cincinnati*, 1 Ohio St. 268.) The power of regulating, when conferred to its fullest extent, must not be so exercised as to confer monopolies. (See sec. 224, and notes thereto; see further, note *x* to sub. 18 of sec. 379.)

(*g*) See note *a* to sub. 1 of sec. 372.

(*h*) See note *c* to same.

(*i*) Township Councils may grant to School Trustees authority to borrow money. (*In re School Trustees and Sandwich*, 23 U. C. Q. B. 639; *In re Doherty* v. *Toronto*, 25 U. C. Q. B. 409.) It is made the duty of Cities, Towns and Villages to provide such money as may be required by School Trustees. (*In re School Trustees* v. *Port Hope*, 4 U. C. C. P. 418; *In re School Trustees and Toronto*, 20 U. C. Q. B. 302; *In re School Trustees and Toronto*, 23 U. C. Q. B. 203; *In re Coleman and Kerr*, 27 U. C. Q. B. 5.)

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law shall not be repealed; (*j*) and the Trustees of any Burial Ground may agree for the sale or transfer thereof to the Municipality which may desire to acquire the same; and in cases where such grounds have not been used for burials, the Municipality may dispose thereof, and acquire other ground instead thereof; 29-30 V. c. 51, s. 269, sub. 3.

Selling portions of such land for certain purposes.

(8.) For selling or leasing portions of such land for the purpose of interment in family vaults or otherwise, (*k*) and for declaring in the conveyance the terms on which such portion shall be held; 29-30 V. c. 51, s. 269, sub. 4.

*Cruelty to Animals.*

Preventing cruelty to animals, and destruction of birds.

(9.) For preventing cruelty to animals, (*l*) and for preventing the destruction of birds, the By-laws for these

(*j*) As a rule, the jurisdiction of every Council is confined to the Municipality the Council represents. (See note *j* to sec. 16.) Here an authority beyond the limits of the Municipality is given. That authority is to accept or purchase land for public cemeteries, as well within as *without* the Municipality. The acceptance or purchase is to be by By-law, declaring in express terms that the land is appropriated for a public cemetery, *and for no other purpose*. When this is done, the land, although without the Municipality, becomes part thereof for purposes of local government. Under a power to a City Corporation "to establish cemeteries or burial places within or without the City," it was held that the City was authorized to establish cemeteries of its own and to regulate them, but that it did not empower the Council to subject to the control of the City Sexton cemeteries other than those belonging to the City, nor to pass a By-law for prohibiting lot owners in private cemeteries, though within the City limits, from entering to bury their dead without permission of the City Sexton and the payment of a fee to him. (*Bogert* v. *Indianapolis*, 13 Ind. 134.) If the burden to support a cemetery be cast on all the citizens, a By-law imposing the burden on a particular class would be bad. (*Beurojohn* v. *Mayor, &c.*, 27 Ala. 58.) Cemeteries are not *per se* nuisances. It is not enough to compel their removal to show that they affect the value of property in the neighbourhood. (*New Orleans* v. *St. Louis*, 11 La. An. 244; *Musgrove* v. *The Catholic Church of St. Louis*, 10 La. An. 431; *Lake View* v. *Letz*, 44 Ill. 81; see further, note *z* to sub. 19 of sec. 379.)

(*k*) There is no limitation as to the interest to be conveyed. When a Municipality is seized in fee simple, the conveyance may be made either for ever or for years. The power is to "sell" or "lease."

(*l*) A cock has been held to be a domestic animal within the meaning of the English statutes for the prevention of cruelty to animals. (*Budge* v. *Parsons*, 3 B. & S. 382; see further, *Morley* v. *Greenhalgh*, *Ib.* 374; *Clark* v. *Hague*, 2 E. & E. 281; *Coyne* v. *Brady*, 12 Ir. C. L. R. 577.) The words of our Acts respecting cruelty to animals are: "Any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, pig, or other cattle, or any poultry, or any dog or domestic animal, or bird." (Con. Stat. Can. cap. 96, sec. 1; Dom. Act 32 & 33 Vic. cap. 27, sec. 1.) The word

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purposes not being inconsistent with any statute in that behalf; (*ll*) 29-30 V. c. 51, s. 269, sub. 5.

*Dogs.*

(10.) For restraining and regulating the running at large of dogs, (*m*) and for imposing a tax on the owners, possessors Regulations as to dogs.

"cattle," used in the recent English statute 28 & 29 Vic. cap. 60, sec. 1, has been held to include horses and mares. (*Wright* v. *Pearson*, L. R. 4 Q. B. 582.) A bequest for founding and upholding an institution for studying and curing maladies of quadrupeds or birds useful to man is a good charitable legacy. (*University of London* v. *Yarrow*, 23 Beav. 159; 2 Jur. (N. S.) 1125, affirmed on appeal; 1 De G. & J. 72; 3 Jur. (N. S.) 421.)

(*ll*) It is a principle applicable to every By-law that it be not contrary to any statute in that behalf. (See note *i* to sec. 223.)

(*m*) The power is not merely to "regulate," but to "restrain" the running at large of dogs. This may be read in connection with the next subsection, which provides "for killing dogs" running at large contrary to the By-laws. It will be observed that this subsection immediately follows one which enables Corporations to pass By-laws for preventing cruelty to animals. The killing of dogs, under certain circumstances, though certainly cruelty to the dogs, is authorized and justified on the ground that public safety demands it. The validity of laws providing for the forfeiture or destruction of property without compensation to the owners, has more than once been doubted. (See note *a* to sec. 373.) But it is now settled that all rights of property are held subject to such reasonable control and regulation of the mode of keeping and use, as the Legislature may think necessary for the preventing of injuries to the rights of others, and the security of the public health and welfare. In the exercise of this power, the Legislature may not only provide that certain kinds of property, either absolutely or when held in such a manner or under such circumstances as to be injurious, dangerous or noxious, may be seized and confiscated upon legal process, after notice and hearing, but may also, when necessary to insure the public safety, authorize such property to be summarily destroyed by the Municipal authorities, without previous notice to the owner. (*Per* Gray, J., in *Blair* v. *Forehand*, 100 Mass. 136; s. c. 1 Am. R. 94; and *per* Robinson, C. J., in *McKenzie* v. *Campbell*, 1 U. C. Q. B. 241-243.) A familiar example given in each of the cases is that of pulling down buildings to prevent the spreading of conflagration, or the impending fall of the buildings themselves. (*Mouse's Case*, 12 Co. 63, *Ib.* 13; *Maleverer* v. *Spink*, 1 Dyer, 36 b; *Governor* v. *Meredith*, 4 T. R. 794; 15 Vin. Abr. Title "Necessity," pl. 8; *Respublica* v. *Sparhawk*, 1 Dallas, 357; *Taylor* v. *Plymouth*, 8 Met. 462-465; *New York* v. *Lord*, 18 Wend. 126; *Conwell* v. *Emrie*, 2 Ind. (Cart.) 35; see also *American Print Works* v. *Lawrence*, 3 Zabr. (N. J.) 590; *Commonwealth* v. *Alger*, 7 Cush. 85; *Salem* v. *Fisher* v. *McGirr*, 1 Gray, 27; *Parsons* v. *Pentingell*, 11 Allen, 512; *Eastern Railroad Co.*, 98 Mass. 443; *License Cases*, 5 How. 581, 589, 632.) There is no kind of property over which the exercise of this power is more frequent or supposed to be more necessary than dogs. In the view of the common law, dogs of all sorts had no intrinsic value, and the owner was held to have so little property in them

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or harbourers of dogs; (*n*) 29-30 V. c. 51, s. 269, sub. 6.

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that the stealing of them was not larceny. (*The Queen* v. *Robinson*, 8 Cox, C. C. 115; *Mitten* v. *Faudyre*, Pop. 161; *Millen* v. *Fawen*, Bendl. 171; *Mason* v. *Keeling*, 1 Ld. Rayd. 608; *Read* v. *Edwards*, 17 C. B. N. S. 245.) But the principal object of restricting dogs running at large is the consideration of the very imminent danger to the community of the horrible affliction of hydrophobia spreading to a great extent and with great rapidity, unless instant measures be taken to prevent it. (*Per* Robinson, C. J., in *McKenzie* v. *Campbell*, 1 U. C. Q. B. 244.) The law has long made a distinction between dogs, cats and other domestic quadrupeds, growing out of the nature of the creatures and the purposes for which they are kept. Beasts which have been thoroughly tamed, and are used for burden or husbandry, or for food, such as horses, cattle and sheep, are as truly property of intrinsic value, and entitled to the same protection, as any kind of goods. But dogs and cats, even in a state of domestication, never wholly lose their wild nature and destructive instincts, and are kept either for uses which depend on retaining and calling into action those very natures and instincts, or else for the mere whim and pleasure of the owner. (*Per* Gray, J., in *Blair* v. *Forehand*, 1 Am. R. 96.) Dogs have always been entitled to less regard and protection than more harmless and useful domestic animals. (*Putnam* v. *Payne*, 13 Johns. 312; *Brown* v. *Carpenter*, 26 Verm. 638; *Woolf* v. *Chalker*, 31 Conn. 121.) In the case of a By-law against the running at large of dogs, the object of the By-law is not to prevent or punish trespasses upon property, but to protect the people of a city or town against danger to their lives—against threatened death in perhaps its most distressing form. (*Per* Robinson, C. J., in *McKenzie* v. *Campbell*, 1 U. C. Q. B. 250, 251.) The most effective mode of protecting people from such a danger is the annihilation of the cause of danger; and so, under a statute which merely authorized the Corporation to pass By-laws for "preventing and regulating" dogs running at large, it was held that the Corporation had power to pass a By-law for the killing of dogs running at large in violation of the provisions of the By-law. (*Ib.* 241.) By the statute under consideration, the Legislature have not left the power to inference, but conferred it in express language, "for killing dogs running at large," &c. Let it be observed that the power either to restrain, regulate or kill, is only to be exercised as to "dogs running at large." Therefore, where an officer, under such a By-law, entered a dwelling house, took the dog from the dwelling house, and afterwards killed it, he was held liable to the owner. (*Bishop* v. *Fahay*, 15 Gray, 61; *Kerr* v. *Seaver*, 11 Allen, 151.) If the power were to kill "whenever or wherever found," the officer would have a right peaceably to enter for that purpose, without permission, upon the close of the owner or keeper of the dog, and there kill it. (*Blair* v. *Forehand*, 1 Am. R. 94.) As to when dogs can be said to be "running at large," see *Commonwealth* v. *Dow*, 10 Metc. 382.

(*n*) Besides the power to restrain, regulate and, if necessary, kill dogs under the operation of By-laws, the additional power here conferred is to provide by By-law for imposing a tax on the owners, possessors or harbourers of dogs. It is generally observed that when Assessors pay visits in the discharge of their duties there are many

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(11.) For killing dogs running at large contrary to the By-laws; (*o*) 29-30 V. c. 51, s. 269, sub. 7. Killing dogs.

*Fences.*

(12.) For settling the height and description of lawful fences; (*p*) 29-30 V. c. 51, s. 269, sub. 8. Fences.

*Division Fences.*

(13.) For regulating the height, extent and description of lawful division fences, (*q*) and for determining how the cost Division fences, and cost thereof.

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dogs without owners. But in order that some person may be taxed for the possession of such questionable property, provision is made for the taxation of the possessors or harbourers thereof. "The imposing a tax is to be looked upon rather as a measure of revenue than as a mode intended to be pointed out for indirectly restraining or prohibiting the keeping of dogs by imposing a tax on them." (*Per* Robinson, C. J., in *McKenzie* v. *Campbell*, 1 U. C. Q. B. 246.)

(*o*) See note *m* to sub. 10 of this section.

(*p*) An owner or occupier of lands, though bound to take care that his cattle do not wander from his own land and stray upon the lands of another, is not by the common law under any obligation to put up or maintain a fence.) *Hilton* v. *Ankesson*, 27 L. T. N. S. 519 Ex.; see also *Wells* v. *Howell*, 19 Johns. 385; *Stafford* v. *Ingersoll*, 3 Hill, 38; *Laurence* v. *Jenkins*, L. R. 8 Q. B. 274; *Erskine* v. *Adeane*, L. R. 8 Ch. Ap. 756.) Such an obligation can only be founded upon prescriptive statutory obligation, by-law, agreement or covenant. (*Ib.*) If the obligation to fence exist, it is in general absolute—the act of God or *vis major* only excepted. It is no defence, therefore, in such a case that the defendant had no notice of the want of repair. (*Laurence* v. *Jenkins*, L. R. 8 Q. B. 274.) It is provided by Con. Stat. U. C. cap. 57, that each of the parties occupying adjoining tracts of land shall make, keep up and repair a just proportion of the division or line fence on the line dividing such tracts, and equally on either side thereof. (Sec. 1.) If there be a duty to fence, the neglect of it deprives the person upon whom the duty devolves of the right to complain of injuries suffered by his animals (*Cincinnati, H. & D. Railroad Co.* v. *Waterson*, 4 Ohio St. 424), or by the entry of animals on his land for want of a sufficient fence. (*York* v. *Davis*, 11 N. H. 241; see also *Rust* v. *Low*, 6 Mass. 90.) Where the Legislature imposed a penalty of $100 upon railways for every month's delay in performing the duty of maintaining and keeping legal and sufficient fences, it was held that the neglect of the Corporation to perform the duty rendered them liable to reimburse any person suffering injury thereby. (*Norris* v. *Androscoggin Railroad Co.*, 39 Maine R. 273.) So it has been held that any one who voluntarily suffers his cow to go at large in the public streets of a City, contrary to its By-laws, with no one to take charge of her, and thus to stray upon a railroad track at the time when the cars are passing, cannot recover against the company without proof of gross negligence on their part. (*Bowman* v. *Troy and Boston Railroad Co.*, 37 Barb. 516; see also *Bellefontaine and Indiana Railroad Co.* v. *Bailey*, 11 Ohio St. 333; *Louisville, &c. Railroad Co.* v. *Ballard*, 2 Met. (Ky.) 177.)

(*q*) See preceding note.

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thereof shall be apportioned; and for directing that any amount so apportioned shall be recovered in the same manner as penalties not otherwise provided for may be recovered under this Act; (*r*) but until such By-laws be made, the Act respecting line fences and water courses shall continue applicable to the Municipality; (*s*) 29-30 V. c. 51, s. 269, sub. 9.

Provision until by-laws made.

*Water Courses.*

Water courses.

(14.) For compelling the owners of lands through which any open drain or water course passes, to erect and keep up water gates where fences cross such drain or water course, and for preventing persons obstructing any drain or water course; (*t*) *New.*

*Weeds.*

Prevention of growth of thistles and weeds.

(15.) For preventing the growth of Canada thistles and other weeds detrimental to husbandry, and compelling the destruction thereof; for the appointment of an Inspector, with power to enforce the provisions of such By-law, for regulating his duties, and for determining the amount of remuneration, fees or charges he is to receive for the performance of such duties; (*u*) 29-30 V. c. 51, s. 269, sub. 10; 37 V. c. 16, s. 15.

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(*r*) The powers here conferred are—

1. "For regulating" the height, extent and description of lawful division fences;

2. "For determining" how the cost thereof shall be apportioned;

3. "For directing" that any amount so apportioned shall be recovered in the same manner as penalties, not otherwise provided for, may be recovered under this Act.

(*s*) Con. Stat. U. C. cap. 57.

(*t*) It is the duty of a person who constructs a dam so to construct it, with waste gates or otherwise, as to permit the passage of the water, and to keep the waste gates in a dam free for the passage of water. *Schuylkill Navigation Co.* v. *McDonough*, 33 Pa. St. 73.) If a dam be so improperly constructed as to cause ice to accumulate, and on the ice breaking up in the spring the fields adjoining the dam are injured, the proprietor is liable for special injuries caused by such accumulations of ice. (*Bell* v. *McClintock*, 9 Watts. 119; see also *Cowles* v. *Kidder*, 24 N. H. 364; *sed qu.* see *Smith* v. *Agawam Canal Co.*, 2 Allen, 355.)

(*u*) If any owner, possessor or occupier of land knowingly suffer any Canada thistles to grow thereon, and the seed to ripen so as to cause or endanger the spread thereof, he is liable to prosecution. (29 Vic. cap. 40, sec. 1.) A person knowingly selling any grass or other seed among which there is any seed of the Canada thistle, is also liable to prosecution. (*Ib.* sec. 6.) Overseers of

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*Filth in Streets.*

(16.) For preventing persons throwing any dirt, filth, carcases of animals, or rubbish, on any street, road, lane or highway; (*v*) 31 V. c. 30, s. 36.

Preventing throwing of dirt, &c., in streets, &c.

*Burning Stumps, Brush, &c.*

(17.) For regulating the time during which stumps, wood, logs, trees, brush, straw, shavings or refuse may be set on fire or burned in the open air, (*w*) and for prescribing precautions to be observed during such times, and for preventing such fires being kindled at other times; *New.*

Regulating the burning of stumps, trees, brush, &c.

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highways may, with the authority of the Municipal Councils of which they are officers, enter on lands for the purpose of destroying Canada thistles. (32 Vic. cap. 41.)

(*v*) The streets, roads and lanes of a City, Town or Village should, in the interest of public health, be kept free from dirt, filth, carcases of animals, and other rubbish. The allowance of such deposits on the streets would be the allowance of nuisances. The right of the public to the healthy and unrestricted use of the public highways should be of the first concern to Municipal bodies. (See *People* v. *Cunningham*, 1 Denio, 524.) It has been held to be an indictable offence to expose a person having a contagious disease, as the small-pox, on a public highway. (*The King* v. *Vantandillo*, 4 M. & S. 73; *The King* v. *Burnett*, *Ib.* 272.)

(*w*) Where the owner of land, without wilfulness or negligence, uses his land in the ordinary manner of its use, though mischief should thereby be occasioned to his neighbour, he will not be liable to damages. But if he bring upon his land anything which would not naturally come upon it, and which in itself is dangerous, and may become mischievous if not kept under proper control, though in so doing he may act without personal wilfulness or negligence, he will be liable to damages for any mischief thereby occasioned. (*Fletcher* v. *Rylands*, L. R. 1 Ex. 265, 279; s. c. L. R. 3 H. L. 330; *Carstairs* v. *Taylor*, L. R. 6 Ex. 217; *Smith* v. *Fletcher*, L. R. 7 Ex. 305; *Ross* v. *Fedden*, L. R. 7 Q. B. 661; *Gillson* v. *North Grey Railroad Co.*, 33 U. C. Q. B. 128.) But so far as fire is concerned, the law seems, for the present at all events, to stand upon a different footing. (*Buchanan* v. *Young*, 23 U.C. C.P. 101.) It is not very long since this country was altogether a wilderness. Till the land is cleared it can produce nothing, and burning the wood is a necessary part of the operation of clearing. If it could be shown that this business of clearing land could, by means which we can suppose to be within the reach of those employed in it, be done at a time or in a manner that would make it wholly independent of any accident beyond the control of the party, then, perhaps, the bare fact of not having taken those means might be held to constitute negligence. (*Per* Robinson, C. J., in *Dean* v. *McCarty*, 2 U. C. Q. B. 448-450; see also *Ryan* v. *New York Central Railroad Co.*, 35 N. Y. 210; *Calkins* v. *Barger*, 44 Barb. 424; *Stuart* v. *Hawley*, 22 Ind. 619; *Fahn* v. *Reichart*, 8 Wisc. 255; *Clark* v. *Foot*, 8 Johns. 421; *Hanlon* v. *Ingram*, 8 Iowa, 81; *Averitt* v. *Murrell*, 4 Jones (N. C.),

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*Exhibitions, Shows, &c.*

Regulating public shows and licensing same.

(18.) For preventing or regulating and licensing exhibitions of wax work, menageries, circus, riding, and other such like shows usually exhibited by showmen, and for requiring the payment of license fees for authorizing the same, not exceeding one hundred dollars for every such license, and

Fines for infraction.

for imposing fines upon persons infringing such By-laws, and for levying the same by distress and sale of the goods and chattels of such showman, or belonging to or used in such exhibition, whether owned by such showman or not, or for the imprisonment of such offenders for any term not exceeding

Proviso.

one month; (*x*) Provided always, that it shall not be lawful

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323; *Miller* v. *Martin*, 11 Mo. 508; *De France* v. *Spencer*, 2 Greene (Iowa), 462; *Bennett* v. *Scutt*, 18 Barb. 347.) By the common law an action lies against the party by whose negligence or that of his servants a fire arises on his premises and damages the property of another. (*Filliter* v. *Phippard*, 11 Q. B. 347; see also *Barnard* v. *Poor*, 21 Pick. 378; *Maull* v. *Wilson*, 2 Harrington, 443.) One who purposely sets fire to anything upon his own premises is bound to use ordinary care to avoid damage thereby to the property of another. (*Scott* v. *Hale*, 16 Maine, 326.) The burden of proof in this, as in other cases of negligence, appears to rest on the plaintiff. (*Tourtellot* v. *Rosebrook*, 11 Met. 460; *Bachelder* v. *Heagan*, 18 Maine, 32; *Calkins* v. *Barger*, 44 Barb. 424; *Jordan* v. *Wyatt*, 4 Gratt. 151; but see *Tubervil* v. *Stamp*, 1 Salk. 13; *Hanlon* v. *Ingram*, 3 Iowa, 81.)

The power here given is for regulating—

1. *The times* during which stumps, wood, logs, trees, brush, straw, shavings or refuse may be set on fire or burned in the open air;
2. And for prescribing *precautions* to be observed *during such times;*
3. And for preventing fires being kindled at *other* times.

The kindling of a fire, in a Municipality where such a By-law exists, at a time other than that prescribed by the By-law, or in disregard of the precautions made necessary by the By-law, would be strong if not conclusive evidence of negligence.

(*x*) In the United States a distinction has been made in the use of the words "regulate" and "license," as used in reference to useful trades and employments, and as used in reference to amusements, exhibitions, &c. As to the former, there is no right to use the license as a mode of taxation with a view to revenue and perhaps prohibition; but as regards the latter, more extensive powers may be exercised under the very same words. (*Ash* v. *People*, 11 Mich. 347; *Freeholders of Essex* v. *Barber*, 2 Hals. 64; *Carroll* v. *Tuscaloosa*, 12 Ala (N.S.) 173; *Greensboro'* v. *Mullins*, 13 Ala. (N.S.) 34; *City Council* v. *Ahrens*, 4 Strob, 241; *State* v. *Roberts*, 11 Gill. & Johns. 506; *Portland* v. *O'Neill*, 1 Ire. 218; *Bennett* v. *Birmingham*, 31 Pa. St. 15; *Commonwealth* v. *Stodder*, 2 Cush. 562; *Day* v. *Green*, 4 Cush. 433; *Dunham* v. *Rochester*, 5 Cow. 462; *Laurenceburg* v. *West*, 16 Ind. 337; *Cheney* v. *Shelbyville*, 18 Ind. 84; *Bennett* v. *People*, 30 Ill. 389; *Savannah* v. *Charlton*, 36 Geo. 460; *East Louis* v. *Wehrung*, 46 Ill. 392; *Chilvers* v. *People*,

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for the Council of any Municipal Corporation, or the Commissioners of Police in any City, to grant licenses or license certificates to persons having exhibitions of any work or circus-riding, or other shows of a like character, or places of gambling, or to those engaged in traffic in fruits, goods, wares or merchandize of whatever description, for gain, on the days of the exhibition of the Agricultural Association of Upper Canada, or of any County, Electoral Division, or Township Agricultural Society, either on the grounds of such Society or within the distance of three hundred yards from such grounds; (*y*) 29-30 V. c. 51, s. 269, sub. 11.

Licenses not to be granted for certain times and places.

*Graves.*

(19.) For preventing the violation of Cemeteries, graves, tombs, tombstones or vaults where the dead are interred; (*z*) 29-30 V. cap. 51, s. 269, sub. 12.

Protecting graves.

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11 Mich. 43.) The same words in different statutes may have different meanings — broad or narrow, according to the subject matter of legislation and general context. This subsection relates to exhibitions of wax work, menageries, circus-riding and other such like shows usually exhibited by showmen. The power conferred is not merely to regulate and license them, but, if deemed necessary, to prevent them. If prevention be not deemed necessary, and regulation sufficient, the regulation may be by means of a license, but in no case is the license to exceed $100. (See note *f* to sub. 5 of sec. 379.) It has been held that a statute authorizing a Municipality to pass laws for the good government of a City, does not authorize a By-law requiring the proprietor of a circus, theatre or other exhibition licensed by the Corporation, to pay a Police Officer $2 for each night's attendance upon such place of amusement for the purpose of enforcing order. (*Waters* v. *Leech*, 3 Ark. 110.)

(*y*) The general power conferred in the first part of the subsection is to prevent, regulate or license. This intends a discretion to be exercised under all circumstances and in all places. But the latter part of the subsection takes away the discretionary power under the circumstances stated. In no case is it to be exercised "on the days of the exhibition of the Agricultural Association of Upper Canada, or of any County, Electoral Division or Township Agricultural Society, either on the grounds of such Society or within the distance of 300 yards from such grounds."

(*z*) The proper interment of the dead is a matter that deeply concerns the health of the living, and is therefore a proper subject for Municipal control. (*Bogart* v. *Indianapolis*, 13 Ind. 134; *New York* v. *Slack*, 3 Wheel. Cr. C. 237; *Presbyterian Church* v. *New York*, 5 Cow. 538; *Coates* v. *New York*, 7 Cow. 585; *Commonwealth* v. *Fahey*, 5 Cush. 408; *New Orleans* v. *St. Louis Church*, 11 La. An. 244; *Commonwealth* v. *Goodrich*, 13 Allen, 546; see also, *Charleston* v. *Baptist Church*, 4 Strob. (S. C.) 306, 309; *Musgrove* v. *Catholic Church*, 10 La. An. 431; *Austin* v. *Murray*, 16 Pick. 121.) It has been held in the United States that burials are not matters of



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*Shade Trees.*

Encouraging planting of certain trees, &c.

(20.) For allowing to any person who shall plant any fruit trees, or any trees, shrubs or saplings, suitable for affording shade on any highway within the Municipality, (*a*) in abatement of statute labour or out of the general fund, a sum of not less than twenty-five cents for every tree so planted;

*Injuries to Property and Notices.*

Ornamental trees.

(21.) For preventing the injuring or destroying of trees or shrubs planted or preserved for shade or ornament; (*b*)

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ecclesiastical cognizance; that the right to bury a corpse and preserve its remains is a legal right, belonging, in the absence of testamentary disposition, exclusively to the next of kin, and includes the right to select and change the place of sepulture at pleasure, and that if the place of burial be taken for public use, the next of kin may claim indemnity for the expense of removing and suitably interring the remains. (*In re Beekman Street*, 4 Bradf. (N. Y.) 503-532; see also *Bogart* v. *Indianapolis*, 13 Ind. 134; *In re Brick Presbyterian Church*, 3 Edw. Ch. Rep. (N.Y.) 155.) It has been held that it is an indictable offence to take up a dead body even for the purpose of dissection. Common decency requires that such a practice should be prevented. The bare idea of it makes nature revolt. It is an offence against decency to take a person's dead body with intent to sell or dispose of it for gain or profit. It has been held that to sell the dead body of a capital convict for the purpose of dissection, where dissection was no part of the sentence, is a misdemeanor, and indictable at common law. (1 Russell on Crimes, 4th Ed. 629.)

(*a*) The policy of the Municipal law is to encourage the planting of trees on public highways; and in furtherance of this policy, provision is here made for the passing of a By-law allowing a sum of not less that 25 cents for every tree planted on a highway, provided it be *suitable for affording shade*. If the trees are not suitable for shade, the power cannot be exercised. (See notes to sub. 19 of sec. 372.) Shade trees planted by a land-owner between a carriage path and a sidewalk are not to be deemed a nuisance. (*Graves* v. *Shattuck*, 35 N. H. 258.)

(*b*) It was held in the United States—under a general power "to ordain such laws, not inconsistent with the Constitution and laws of the State, *as shall be needful to the good of the City*"—that the City had power to pass a By-law imposing a penalty upon any person who should *mutilate* or *destroy* any ornamental tree planted in the streets, lanes or other public places of the City. (*State* v. *Merrill*, 37 Maine, 329.) Whatever doubt there might be as to the power under a statute so general as that quoted, there can be none under the subsection here annotated, which is "for *preventing* the *injuring* or *destroying*" of trees or shrubs planted or preserved for shade or ornament. In order to sustain a charge under such a By-law, it would not be necessary to show that the injury or destruction was either wanton or malicious. If any person unlawfully and maliciously cuts, breaks, barks, roots up, or otherwise destroys or damages the whole or any part of any tree, sapling or shrub, or any underwood re-

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and the defacing of private or other property by printed or other notices; (*c*) *Vide* 29-30 V. c. 51, s. 269, sub. 13.

(22.) For preventing the pulling down or defacing of signboards, (*d*) and of printed or written notices lawfully affixed; (*e*) *Vide* 29-30 V. c. 51, s. 269, sub. 14. Signs.

*Gas and Water Companies.*

(23.) For authorizing any corporate gas or water company to lay down pipes or conduits for the conveyance of water or gas under streets or public squares, (*f*) subject to such regulations as the Council sees fit; 29-30 V. c. 51, s. 269, sub. 15. Authorizing gas and water companies to lay down pipes, &c.

(24.) For acquiring stock in, or lending money to, any such company; and for guaranteeing the payment of money borrowed by, or of debentures issued for money so borrowed Taking stock in gas and water companies.

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spectively growing in any park, pleasure ground, garden, orchard or avenue, or in any ground adjoining or belonging to any dwelling house, the offender, &c., is guilty of a misdemeanor. (Con. Stat. Can. cap. 93, sec. 24; see further, note *j* to sub. 19 of sec. 372.)

(*c*) No one has a right to injure the property of another with a view to gain or otherwise. Posting up placards against house walls, &c., may be a defacement thereof, and so a legal injury. The object of this subsection is to authorize the passing of By-laws to prevent such injuries.

(*d*) The pulling down or defacement of signboards is an amusement to which young men in a frolic often resort, without any regard to the consequences. It would be well for all such to know that persons tearing down or defacing signs are liable to be proceeded against as vagrants. (See 32 & 33 Vic. cap. 28, s. 1.)

(*e*) "*Lawfully* affixed." (See note *c* to sub. 21 of this section.)

(*f*) In general, the sanction of the Legislature, or of some Municipal authority having the power to confer it, is necessary to authorize the laying down of gas pipes under streets or public squares. (*Ellis* v. *Sheffield Gas Co.*, 23 L. J. Q. B. 42; *The Queen* v. *Longton Gas Co.*, 2 E. & E. 651; see also *The Queen* v. *Charlesworth*, 16 Q. B. 1012; *The Queen* v. *Train*, 9 Cox. (C. C.) 180; *Boston* v. *Richardson*, 13 Allen, 146, 160; *State* v. *Cincinnati Gas Co.*, 18 Ohio St. 262; *Milhau* v. *Sharp*, 15 Barb. 193; *Smith* v. *Metropolitan Gas Co.*, 12 How. Pr. 187; *People* v. *Bowen*, 30 Barb. 24; *Norwich Gas Co.* v. *Norwich City Gas Co.*, 25 Conn. 19.) The laying down of water pipes of course stands on the same footing. (*Milhau* v. *Sharp*, 15 Barb. 210; *Kelsey* v. *King*, 32 Barb. 410; *Commissioners* v. *Hudson*, 2 Beas. (N. J.) 420.) A City Council has no power, in the absence of express legislation authorizing it, to grant the exclusive right or monopoly, either as to gas or water, to any one company or person. (*Ohio* v. *Cincinnati Gas Co.*, 18 Ohio St. 262; *Norwich Gas Co.* v. *Norwich City Gas Co.*, 25 Conn. 19; *People* v. *Bowen*, 30 Barb. 24.) A gas or water company is not, in the absence of express statute or contract, bound to furnish gas or water to all buildings on the lines of their main pipes, although compensation for so doing be tendered. (*Patterson Gaslight Co.* v. *Brady*, 3 Dutch. (N. J.) 245.) In the absence of proof of negligence, such a company is not liable for the escape of gas or water. (*Blyth* v. *Birmingham Water Co.*, 11 Ex. 781.)

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by the company; Provided the By-law is consented to by the electors, as hereinbefore provided: (*g*) in such case the

Head of corporation to be a director in certain cases.

head of any Corporation holding stock in any such company to the amount of ten thousand dollars shall be *ex-officio* a Director of the company, in addition to the other Directors thereof, (*h*) and shall also be entitled to vote on such stock at any election of Directors; 29-30 V. c. 51, s. 269, sub. 16; s. 270.

*Establishing Boundaries.*

Regulating boundaries of municipalities.

(25.) For procuring the necessary estimates, and making the proper application for ascertaining and establishing the boundary lines of the Municipality, (*i*) according to law, (*j*) in case the same has not been done; and for erecting and providing for the preservation of the durable monuments required to be erected for evidencing the same; 29-30 V. c. 51, s. 269, sub. 1.

*Inspection of Weights and Measures.* (*jj*)

Weights and measures.

(26.) For appointing Inspectors to regulate weights and measures, (*k*) according to the lawful standard; (*l*) 29-30 V. c. 51, s. 283, sub. 1.

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(*g*) The powers are—

1. To acquire stock;
2. To lend money;
3. To guarantee the payment of money borrowed, or of debentures issued for money borrowed.

In any such case, the By-law is only valid when assented to by the electors.

(*h*) Although the Municipal Corporation may either acquire stock, lend money, or guarantee money borrowed by a gas or water company, it is only when it acquires stock to the amount of at least $10,000 that the head of the Corporation becomes an *ex-officio* director.

(*i*) See note *t* to sec. 12.

(*j*) See sec. 380.

(*jj*) By 37 Vic. c. 16, sec. 16, the following subsections, 26, 27, 28, 29 and 30, of this section were repealed, and re-enacted as subsections 20, 21, 22, 23 and 24 of sec. 372 of this Act; the effect of which is to extend to Counties the powers contained in these subsections.

(*k*) The power to appoint Inspectors of Weights and Measures was at first vested in the Magistrates in Quarter Sessions. (4 Geo. IV. cap. 16, sec. 6, sess. 1.) The Legislature afterwards assumed that the power was transferred to Municipal Councils (12 Vic. cap. 85, s. 12), but in 1855 removed all doubt on the point by passing an Act expressly giving the power to each County and City. (18 Vic. cap. 135, s. 1.) By the Act here annotated, the power is conferred upon the Councils of Cities, Towns and Incorporated Villages. "Weights and Measures" are subjects under the exclusive control of the Legislature of the Dominion. (B. N. A. Act, s. 91, sub. 17.)

(*l*) In 1823, the Legislature set apart the sum of £75 towards purchasing a complete set of weights and measures for Upper Canada,

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(27.) For visiting all places wherein weights and measures, steelyards or weighing machines of any description are used; (*m*) 29-30 V. c. 51, s. 283, sub. 2. Inspecting, &c., same.

(28.) For seizing and destroying such as are not according to the standard; (*n*) 29-30 V. c. 51, s. 283, sub. 3. False weights, &c.

(29.) For imposing and collecting penalties upon persons who are found in possession of unstamped or unjust weights, measures, steelyards, or other weighing machines; (*o*) 29-30 V. c. 51, s. 283, sub. 4. Penalties.

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according to the standard of the Exchequer in England (4 Geo. IV. cap. 16, s. 2, 1 sess.), which standard was directed to remain in the custody of the Secretary of the Province. (*Ib.*) Upon the application of the Magistrates in Quarter Sessions assembled in any District, the Secretary, at the cost of the District, was bound to furnish to the District a true standard of weights and measures (*Ib.* sec. 3), these to be deposited with District Inspectors. (*Ib.* sec. 4.) Provision was afterwards made, allowing the Municipality of any City, Town, or Incorporated Village appointing an Inspector of Weights and Measures, to adjust weights and measures for the use of such City, Town, or Incorporated Village, by the standard weights and measures in the possession of the District or County Inspector. (12 Vic. cap. 85, s. 12.)

(*m*) It is necessary that weights and measures should be "according to the lawful standard," and in aid of this enactment power is given for visiting "all places where weights and measures of *any* description are used."

(*n*) The power to seize, forfeit and destroy the property of another is an extreme power, and only to be exercised when expressly conferred. (*Donovan* v. *Vicksburg*, 29 Miss. (7 Cush.) 247; *Miles* v. *Chamberlain*, 17 Wis. 446; *Cincinnati* v. *Buckingham*, 10 Ohio, 257; *Rosebaugh* v. *Saffin*, *Ib.* 32; *Phillips* v. *Allen*, 41 Pa. St. 481; *Mobile* v. *Yuille*, 3 Ala. 137.) That such a power may be expressly conferred by the Legislature is now beyond doubt. (See note *m* to sub. 10 of sec. 379.)

(*o*) A By-law, to the effect that every person selling meat or articles of provision by retail, whether by weight, count or measure, should provide himself with scales, weights and measures, but that no spring balance, spring scale, spring steelyards, or spring weighing machine should be used for any market purpose, was held valid. (*In re Snell and Belleville*, 30 U. C. Q. B. 81.) By-laws requiring the weighing or measurement of goods before sale are a valid exercise of Municipal power, and are not illegal as in restraint of trade. (*Raleigh* v. *Sorrell*, 1 Jones (N. C.) 49; *Stokes* v. *New York*, 14 Wend. 87; *Paige* v. *Fazackerly*, 36 Barb. 392; *New York* v. *Nichols*, 4 Hill. (N. Y.) 209; *Yates* v. *Milwaukee*, 12 Wis. 673; *Tinkham* v. *Tapscott*, 17 N.Y. 147; *Chicago* v. *Quimby*, 38 Ill. 274; *Briggs* v. *A Light Boat*, 7 Allen, 287; *Frazier* v. *Warfield*, 13 Md. 279.) So the establishment of public weighing scales for hay. (*Goss* v. *Corporation*, 4 Sneed. (Tenn.) 62; *Yates* v. *Milwaukee*, 12 Wis. 673.) Upon the conviction of a railway company under the English statute 5 & 6

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Seizing bread, &c.

(30.) For seizing and forfeiting bread or other articles when of light weight or short measurement; (*p*)

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Wm. IV. cap. 63, s. 28, for having in their possession a weighing machine which, upon examination thereof, duly made by the Inspector of Weights and Measures, was found to be incorrect; *held*, that a machine which, from its construction, was liable to variation from atmospheric and other causes, and required to be adjusted before it was used, was not incorrect upon examination within the meaning of the statute, if examined by the Inspector before it had been adjusted. (*London & N. W. Railway Co.* v. *Richards*, 2 B. & S. 326.) But a weighing machine which has become out of order so as to weigh untruly, is an incorrect weighing machine within the meaning of that statute, although, by making an allowance for the error, the weight of the article could be ascertained truly by it. (*Great Western Railway Co.* v. *Bailie*, 5 B. & S. 928.) Scales having shot placed within a ball, which shot may be removed at pleasure, renders the scale an improper instrument of adjustment within the meaning of that statute. (*Carr* v. *Stringer*, L. R. 3 Q. B. 433.) A spring balance unjust to the *seller* is not within the statute, which is for the protection of the public when purchasing. (*Brooke* v. *Shadgate*, L. R. 8 Q. B. 352.)

(*p*) The assize of bread has from the earliest times been deemed necessary. (See Burn's Justice, Title "Bread.") The power to seize, as forfeited, bread or other property for light weight or short measurement is one that cannot be inferred from a mere power to regulate. (See note *n* to sub. 28 of sec. 379.) It is here in express terms conferred. Power "to regulate everything which relates to bakers" was held to give authority to provide for a forfeiture of bread baked contrary to the provision of a By-law. (*Mobile* v. *Yuille*, 3 Ala. 137.) So a By-law, providing a forfeiture for the use of the City Workhouse of bread so baked, was held legal. (*Guillotte* v. *New Orleans*, 12 La. An. 432; *Page* v. *Fazakerly*, 36 Barb. 392.) The sale of bread is now in England regulated by 6 & 7 Wm. IV. cap. 37. In it there was an exception of bread which, when the Act was passed, was known under the denomination of French or fancy bread. When this fancy bread became afterwards bread in ordinary and common use, and was so sold, it was held that the exception had ceased. (*The Queen* v. *Wood*, L. R. 4 Q. B. 559.) "The object of the Legislature in passing the Act was to liberate the trade from the restrictions of the Assize Act, and leave the baker at liberty to make bread of any size and shape he pleased, and to charge his own price for it; but in order to protect the customer from imposition, it required the baker to sell by weight. He is no longer at liberty to sell at so much a loaf; he must sell at so much per pound, and the customer is to be supplied with so many pounds of bread, unless he chooses to have an article of an exceptional quality—something that is not ordinary bread; and if he buy that, the baker is at liberty to sell it without reference to weight. But, unless it is of an exceptional character, if it is the common article of consumption, the baker must sell it as such. It is obvious that if what is now ordinary bread is to be treated as exceptional and an article of luxury, because it was so at the date of the Act, the enactment will become a dead letter." (*Per* Lush, J., *Ib.* 562.) In another case, under the same Act, Cockburn, C.J.,

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*Public Morals.*

(31.) For preventing the sale or gift of intoxicating drink to a child, apprentice or servant, without the consent of a parent, master, or legal protector; (*q*) 29-30 V. c. 52, s. 284, sub. 1. Sale of intoxicating drink to children, &c.

(32.) For preventing the posting of indecent placards, writings or pictures, or the writing of indecent words, or the making of indecent pictures or drawings, on walls or fences in streets or public places; (*r*) 29-30 V. c. 52, s. 284, sub. 2. Indecent placards, &c.

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said, "We think, when a customer asks for bread by weight, that clearly is a case in which, whether the baker chooses to give him ordinary bread or fancy bread, the baker is bound to sell by weight. We by no means say the baker was bound to weigh in the presence of the customer, but he was bound to weigh the bread at some time or other before he sold it, and to sell it by weight instead of by the denomination of household bread, fancy bread, or any other denomination." (*The Queen* v. *Kennett*, L. R., 4 Q. B. 565–567; see further, *The Aerated Bread Co.* v. *Gregg*, L. R. 8 Q. B. 355.)

(*q*) The By-law may be passed to prevent the *sale* or *gift* of intoxicating drink to the classes mentioned, unless under the circumstances directed, that is, to a child, apprentice or servant, with the consent of the parent, master or legal protector, and not otherwise. (See note *o* to sec. 390.) It was held that a Municipal Corporation, in the absence of express legislation, had no power to pass such a By-law as here authorized. (*In re Barclay and Darlington*, 12 U. C. Q. B. 86.) But express provision was afterwards made on the subject. (See *In re Ross and York & Peel*, 14 U. C. C. P. 171.) Though idiots and insane persons are not mentioned in the section, a By-law preventing sales to such persons would not be bad. (*Ib.*) So long as such a By-law is not repugnant to the laws of the Province or of the Dominion, there would appear to be no objection to it. (*Ib.*)

(*r*) The things which may be prevented by By-law, under this subsection, are the following:

1. The posting of indecent placards, writings or pictures;
2. The writing of indecent words;
3. The making of indecent pictures or drawings;

On walls or fences in streets or public places.

A thing may be said to be "indecent" when offensive to modesty or delicacy.

It is a misdemeanor to procure indecent prints with intent to publish them. (*Dugdale* v. *The Queen*, 1 El. & B. 435.) But to preserve and keep them in possession is no offence. (*Ib.*) The sale of an obscene print to a person in private—he having in the first instance requested that such prints should be shown to him, his object being to prosecute the seller—is a sufficient publication to sustain the charge. (*The Queen* v. *Carlile*, 1 Cox C. C. 229.; see further, note *z* to sub. 39 of this section.)

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Vice, drunkenness, &c.

(33.) For preventing vice, drunkenness, profane swearing, obscene, blasphemous or grossly insulting language, and other immorality and indecency; (*s*) 33 V. c. 26, s. 4.

Lewdness.

(34.) For suppressing disorderly houses and houses of ill-fame; (*t*) 29-30 V. c. 51, s. 284, sub. 4.

Exhibitions, &c.

(35.) For preventing or regulating and licensing exhibitions held or kept for hire or profit, bowling alleys, and

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(*s*) Collecting crowds in the streets by using violent and indecent language to those passing in the street, thereby obstructing their free passage, is an indictable nuisance. (*Barker* v. *Commonwealth*, 19 Pa. St. 412.)

(*t*) Power to make By-laws relative to nuisances has been held to confer authority to impose penalties on bawdy houses, and on persons owning houses used, with their knowledge, for such purposes. (*McAllister* v. *Clark*, 33 Conn. 91; see also *Ely* v. *Supervisors*, 36 N. Y. 297; *Shafer* v. *Mumma*, 17 Md. 331.) Here the power conferred is to make By-laws for "*suppressing* disorderly houses and houses of ill-fame." This, by implication, confers the right to use means necessary to that end. (*Childress* v. *Mayor, &c.*, 3 Sneed. (Tenn.) 347.) Forbidding owners of houses from letting or renting for such a purpose is lawful. (*Ib.*) But though destruction of the house would be a means of suppressing it (see note *m* to sub. 10 of s. 379), it would seem that power to demolish is not to be inferred from the power to suppress. (*Welch* v. *Stowell*, 2 Doug. (Mich.) 332.) The *building* in which a particular trade is carried on, or the *house* which may be kept in a disorderly manner or used for unlawful purposes, is not *per se* a nuisance. It is the misuse or abuse of it that constitutes the nuisance. (*Burditt* v. *Swenson*, 17 Tex. 489; *Dargan* v. *Waddell*, 9 Ire, (Law) 244.) The *property* in the tenement is therefore protected against destruction. (*Miller et al* v. *Burch*, 32 Tex. 208; s. c. 5 Am. R. 242; *Welch* v. *Stowell*, 2 Doug. (Mich.) 323; see also, *Ely* v. *Supervisors*, 36 N. Y. 297.) A house which is only a nuisance because occupied by one who carries on a business that is a nuisance, cannot be destroyed. (*Clark* v. *Syracuse*, 13 Barb. 32.) In prosecutions for keeping bawdy houses, evidence may be given as to the common reputation of the defendants. (*State* v. *McDowell*, Dudley (S. C.) 346.) Where defendants, as master and mistress, resided in a house to which men and women resorted for the purpose of prostitution, but no indecency or disorderly conduct was perceptible from the exterior of the house, it was held, notwithstanding, that defendants were rightly convicted of keeping a house of ill-fame. (*The Queen* v. *Rice et al*, L. R. 1 C. C. 21.) A conviction for that the defendant did on, &c., in the City of Toronto keep a common disorderly bawdy house on Queen street, in the same City, a place of resort for both men and women of lewd character for the purposes of prosecution, was held to be sufficient. (*The Queen* v. *Munro*, 24 U. C. Q. B. 44.) But a conviction under Dominion Act, 32 & 33 Vic. cap. 28, for that defendant was in the night-time of 24th February, 1870, a common prostitute, wandering on the public streets of Ottawa; and not giving a satisfactory account of herself, contrary to the statute, was held bad for not showing sufficiently that she was asked before, or at the time of being taken, to give an account of herself, and did not satisfactorily do so. (*The Queen* v. *Levecque*, 30 U. C. Q. B. 509.)

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other places of amusement; (*u*) 29-30 V. c. 51, s. 284, sub. 6.

(36.) For suppressing gambling houses, (*v*) and for seizing and destroying faro-banks, rouge et noir, roulette tables, and other devices for gambling found therein; (*w*) 29-30 V. c. 51, s. 284, sub. 7. Gaming.

(37.) For preventing horse racing; (*x*) 29-30 V. c. 51, s. 284, sub. 5. Racing.

(38.) For restraining and punishing vagrants, mendicants and persons found drunk or disorderly in any street, highway or public place; (*y*) 29-30 V. c. 51, s. 284, sub. 8. Vagrants.

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(*u*) Under a power to a Municipal Corporation to make "By-laws relative to *nuisances* generally," it was held that a By-law might be passed prohibiting the keeping in any manner whatsoever of a bowling alley for gain or hire. (*Tanner* v. *Albion*, 5 Hill (N. Y.) 121; *Updyke* v. *Campbell*, 4 E. D. Smith 570). But this is contrary to *The People* v. *Sergeant*, 8 Cow. 139. (See also, *Jackson* v. *People*, 9 Mich. 111; *Smith* v. *Madison*, 7 Ind. 86.) It has been held that a ten pin alley is not *per se* a nuisance. (*State* v. *Hull*, 32 N. J. 158.) Where the power to the Corporation is to determine whether bowling alleys shall be allowed, and if so, under what restrictions, a By-law requiring them to be closed at a certain hour was held valid. (*State* v. *Hay*, 29 Maine 457; see also *State* v. *Freeman*, 38 N. H. 426.) The power by this subsection conferred is not only to regulate and license, but prevent exhibitions held or kept for hire or profit, bowling alleys, and other places of amusement. (See s. 379, sub. 18, and notes thereto.)

(*v*) Power to *suppress* gambling houses does not, it is apprehended, authorize the Corporation to demolish the houses so used. (See note *t* to sub. 34 of this section.) All common gaming houses are nuisances in the eye of the law, being detrimental to the public, as they promote cheating and other corrupt practices, and entice numbers of persons to idleness, whose time might be otherwise employed for the good of the community. (1 Hawke, P. C. cap. 32, s. 4.)

(*w*) As to the power to *seize* and *destroy* private property, when necessary in the public interest, see note *n* to sub. 28 of this section.

(*x*) The power is to *prevent* horse-racing. A former Municipal Act was to "prevent or regulate." Horse-racing is not under all circumstances illegal. (Oliphant on Horses, 3 ed. 412.) No person is, however, permitted by the law to run a horse at a race unless it is his own, nor to enter more than one horse for the same "plate," upon pain of forfeiting the horses. (13 Geo. II. cap. 19, sec. 1.) No party can recover a wager on a horse race that is illegal within the statute. (*Sheldon* v. *Law*, 3 Q. B. O. S. 85.) The proprietor of a racecourse is not responsible for the "purse," unless upon clear proof of an express understanding to that effect. (*Gates* v. *Tinning*, 3 U. C. Q. B. 295.) Nor has the winner a right to recover back his "entrance money," because the purse has not been paid over to him. (*Ib.* See further, *Simms* v. *Denison*, 28 U. C. Q. B. 323.)

(*y*) Notwithstanding there be provision by the general law against vagrants (32 & 33 Vic. cap. 28), it is still in the power of a Municipal

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Indecent exposure.

(39.) For preventing indecent public exposure of the person and other indecent exhibitions; (*z*) 29-30 V. c. 51, s. 284, sub. 9.

Bathing.

(40.) For preventing or regulating the bathing or washing the person in any public water in or near the Municipality. (*zz*) 29-30 V. c. 51, ss. 284, sub. 10, 296, sub. 19.

Placing landmarks and monuments to mark boundaries of concessions, lots, &c.

**380.** In case the Council of any Township, City, Town or Incorporated Village adopts a resolution on the application of one half of the resident landholders to be affected thereby, or upon its own motion, that it is expedient to

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Corporation to make local laws to restrain them, provided the local law be not repugnant to the general law. (*St. Louis* v. *Bentz*, 11 Mo. 61; see also *State* v. *Cowan*, 29 Mo. 330; *Byers* v. *Commonwealth*, 42 Pen. St. 89; *Shafer* v. *Mumma*, 17 Md. 331.) The ancient statutes contain very severe regulations as to vagrants. (22 Hen. VIII. cap. 12; 27 Hen. VIII. cap. 25; 1 Edw. VI. cap. 3; 3 & 4 Edw. VI. cap. 16; 14 Eliz. cap. 5; 18 Eliz. cap. 3; 35 Eliz. cap. 7; 13 & 14 Car. 2, cap. 12, sec. 23; 12 Anne. st. 2. cap. 23; 13 Geo. II. cap. 24; 17 Geo. II. cap. 5.) The last mentioned Act (17 Geo. II. cap. 5), divides vagrants into three classes: first, idle and disorderly persons; second, rogues and vagabonds; and, third, incorrigible rogues. (See further, sec. 369 and notes thereto.)

(*z*) The power is to prevent indecent *public* exposure of the person and *other* indecent exhibitions. In order to render a person liable to an indictment for indecently exposing his person in a public place, it is not necessary that the exposure should be made in a place open to the public. (*The Queen* v. *Thallman*, 9 Cox, C. C. 388; s. c. 9 L. T. N. S. 425.) If the act is done where a great number of persons may be offended by it, and several see it, it is sufficient. (*Ib.*) If the indictment, however, charge the offence to have been committed *on* a highway, such an indictment will not be sustained by evidence that the offence was committed in a place *near* the highway, though in full view of it. (*The Queen* v. *Farrell*, 9 Cox. C. C. 446.) An indecent exposure in a place of public resort, if actually seen by only one person, no other person being in a position to see it, is not an indictable offence. (*The Queen* v. *Webb*, 1 Denn. C. C. 338; *The Queen* v. *Watson*, 2 Cox. C. C. 376; *The Queen* v. *Farrell*, 9 Cox, C. C. 446.) A party was indicted for an indecent exposure in an omnibus, several passengers being therein. *Held*, a public place. (*The Queen* v. *Holmes*, 3 C. & K. 360.) But a urinal, with boxes or divisions for the convenience of the public, though situated in an open market, was held not to be a public place within the meaning of the allegation. (*The Queen* v. *Orchard*, 3 Cox, C. C. 248.)

(*zz*) Whatever place becomes the abode of civilized men, there the laws of decency must be enforced. (*The Queen* v. *Crunden*, 2 Camp. 89.) Bathing in the sea on the beach near inhabited houses, from which the person may be distinctly seen, is an indictable offence, although the houses may have been recently erected, and till then it may have been usual for men to bathe in great numbers at the place. (*Ib.*)

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place durable monuments at the front or rear of any concession or range or part thereof in the Municipality, or at the front or rear angles of the lots therein, (*a*) the Council may apply to the Governor in the manner provided for in the sixth to the tenth sections of the Consolidated Statute for Upper Canada respecting the survey of lands, praying him to cause a survey of such concession or range, or such part thereof, to be made, and such monuments to be placed under the authority of the Commissioner of Crown Lands, (*b*) and the person or persons making the survey shall accordingly plant stones or other durable monuments at the front or at the rear of such concession or range, or such part thereof as aforesaid, or at the front and rear angles of every lot therein (as the case may be), and the limits of each lot so ascertained and marked shall be the true limits thereof; (*c*) and the costs of the survey shall be defrayed in the manner prescribed by the said statute. (*d*) 29-30 V. c. 51, s. 268. Con. Stat. U. C. c. 93.

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(*a*) In the absence of such an application and such a resolution as the statute requires to authorize an application to the Governor to cause the survey to be made, the survey would be held wholly unauthorized. (*Cooper* v. *Wellbanks*, 14 U. C. C. P. 364.) The Court, however, will presume that everything which was done was rightly done, until the contrary appear. (*Ib.*) Where it was shown that the application was made, not by one-half the resident landholders to be affected by the survey, but by ten freeholders, over half of whom had no deeds for their lands, and that eleven or twelve freeholders who would be affected by the survey were not parties to the application, the survey was held to be unauthorized. (*Ib.* See further, *The Queen* v. *McGregor*, 19 U. C. C. P. 69.)

(*b*) The *sixth* section of Con. Stat. U. C. cap. 93, recites that in several of the Townships in Upper Canada, some of the concession lines, or parts of the concession lines, were not run in the original survey performed under competent authority; that the surveys of some concession lines or parts of concession lines have been obliterated, and that, owing to the want of such lines, the inhabitants of such concessions are subject to serious inconvenience, and for remedy provided that the County Council of the County in which any Township in Upper Canada is situate, may, on the application of one-half the resident landholders in any concession (or may without such application), make application to the Governor, requesting him to cause any such line to be surveyed and marked by permanent stone boundaries, under the direction and order of the Commissioner of Crown Lands.

(*c*) If the survey proceed otherwise than as directed by the statute, the survey will be unauthorized. (*Tanner* v. *Bissell*, 21 U. C. Q. B. 553.)

(*d*) All expenses incurred in performing any survey or placing any monument or boundary under the provision of Con. Stat. U. C. cap. 93, must be paid by the County Treasurer to the person or persons

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Cruelty to animals.

**381.** The Council of every Township, City, Town and Incorporated Village, (*e*) may also pass By-laws (not inconsistent with the Consolidated Statute of Canada relating to cruelty to animals); (*f*)

*Providing Pounds, &c.*

Providing pounds.

(1.) For providing sufficient yards and enclosures for the safe-keeping of such animals as it may be the duty of the Pound-keeper to impound; (*g*)

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employed in such survey, on the certificate and order of the Commissioner of Crown Lands. (Con. Stat. U. C. cap. 93, s. 10.) The Council may cause to be laid before them an estimate of the sum requisite to defray the expenses to be incurred, in order that the same may be levied on the proprietors of the land in proportion to the quantity of land held by them respectively in such concession or part of a concession, in the same manner as any sum required for any other purposes authorized by law may be levied. (*Ib.* sec. 9.) A By-law to levy the amount "from the patented and leased lands" is bad. (*In re Scott and Peterborough*, 25 U. C. Q. B. 453; *In re Scott and Harvey*, 26 U. C. Q. B. 32; *In re Scott and Peterborough*, *Ib.* 36; *Peterborough* v. *Smith*, *Ib.* 40.)

(*e*) *Counties* not included.

(*f*) The Consolidated Statute of Canada, cap. 96, intituled "An Act respecting Cruelty to Animals," has been repealed by Dominion Act 32 & 33 Vic. cap. 36, Sch. B, but is re-enacted by Dominion Act 32 & 33 Vic. cap. 27, so that this reference is inaccurate. Besides, it is needless. For a subordinate legislative body, such as a Municipal Corporation cannot have any implied power to make By-laws inconsistent with constitutional Acts of the Legislature, either of the Dominion or of the Province. (See note *i* to sec. 223.)

(*g*) The Pound is the custody of the law. (*Wooley* v. *Groton*, 2 Cush. 305.) The Pound-keeper is bound to take and keep whatever is brought to him, at the peril of the persons who bring it. If wrongfully taken, *they* (not he) are answerable. It would be terrible if the Pound-keeper were liable for refusing to take cattle in, and were also liable in another action for not letting them go. When once the cattle are impounded, he cannot let them go without a replevin brought against the distrainor, or without the consent of the party impounding. The replevin lies against him who takes, or him who commands the taking: the Bailiff who seizes and the party who directs the seizure may both be sued. But the situation of a Pound-keeper is not that of a Bailiff or servant. He is a public officer, discharging a public duty, and this as much in the keeping as in the receiving. (*Wardell* v. *Chisholm*, 9 U. C. C. P. 125; see further, *Clarke* v. *Durham*, E. T. 3 Vic., R. & H. Dig., Trespass, II. 16; *Carey* v. *Tate*, 6 O. S. 147; *Isley* v. *Stubbs*, 5 Mass. 280; *Smith* v. *Huntington*, 3 N. H. 76.) Being a public officer, discharging a public duty, he is entitled to notice of action under Con. Stat. U. C. cap. 126. (*Davis* v. *Williams*, 13 U. C. C. P. 365.) In the declaration, it must be averred that he acted maliciously and without reasonable or probable cause. (*Ib.*) The law would be different if the Pound-keeper voluntarily parts with

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(2.) For restraining or regulating the running at large or trespassing of any animals, and providing for impounding them; and for causing them to be sold in case they are not claimed within a reasonable time, (*h*) or in case the damages, fines and expenses are not paid according to law; Animals running at large.

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the legal control of the animals impounded, or impounds them in any other place than that prescribed by law. (*Bills* v. *Kinson*, 1 Fost. (N. H.) 448.) Breach of a pound and liberating an animal therein confined was held to be no violation of a By-law prohibiting "any person from opposing or interrupting any City officer in the execution of the ordinances of the City." (*Mayor, &c.*, v. *Omburg*, 22 Geo. 67.)

(*h*) The powers are:

1. For *restraining* or *regulating* the running at large of *any* animals;

2. For *impounding* them;

3. For causing them to be *sold* in case they are not claimed within a reasonable time, or in case the damages, fines and expenses are not paid according to law.

This subsection applies in terms to *all* animals. (See sec. 379, sub. 9, and notes thereto.) As to dogs, special provision is made for their destruction when running at large. (See sec. 379, sub. 10, and notes thereto.) The evils to be apprehended from cattle, swine, or poultry running at large are mere injuries to private property and to the neatness and good order of the City or Town. It would not be either reasonable or necessary to allow the destruction of valuable domestic animals in order to prevent the risk of such injuries. Impounding till the damage is paid is the more natural remedy, which the common law has sanctioned from an early period for an injury to private property; and fine upon the owner seems to answer all the purposes of preventing the public nuisance. Nevertheless, the Legislature may by law sanction the more vigorous course of allowing a forfeiture and sale of the animal. (*Per* Robinson, C. J., in *McKenzie* v. *Campbell*, 1 U. C. Q. B. 250.) It is in the power of the Corporation to enforce the provisions of the By-law by the imposition of a fine on the owners of the animals running at large. But if the power had been restricted to the imposition of fines, that would not have given the power to impound, forfeit or sell. (*Miles* v. *Chamberlain*, 17 Wis. 446; *Heise* v. *Town Council*, 6 Rich. (S. C.) 404; *Mobile* v. *Yuille*, 3 Ala. 137; *White* v. *Tallman*, 2 Dutch. (N. J.) 67.) The power to impound and sell should, before it can be legally exercised, be as it is in this section expressly given. (*Cotter* v. *Doty*, 5 Ohio, 394; *Kennedy* v. *Sowden*, 1 McMull. (S. C.) 328; but see *Crosby* v. *Warren*, 1 Rich. (S. C.) 385; *McKee* v. *McKee*, 8 B. Mon. 433.) The By-law should provide for notice, either actual or constructive, prior to the sale. (*Donovan* v. *Vicksburg*, 29 Miss. (7 Cush.) 247; *Rosebaugh* v. *Saffin*, 10 Ohio, 32; *Cincinnati* v. *Buckingham*, *Ib.* 257, 262; *Shaw* v. *Kennedy*, N. C. Term R. 158; *Gooselink* v. *Campbell*, 4 Iowa, 296; *Willis* v. *Legris*, 45 Ill. 289; *Bulluck* v. *Geomble*, *Ib.* 218; *Poppen* v. *Holmes*, 44 Ill. 360; *Hart* v. *Albany*, 9 Wend. 571; *Phillips* v.

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Appraising the damages.

(3.) For appraising the damages (*i*) to be paid by the owners of animals impounded for trespassing contrary to the laws of Ontario or of the Municipality;

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*Allen*, 41 Penn. St. 681; *White* v. *Tallman*, 2 Dutch. (N. J.) 67). The powers of sale conferred by the By-law, whatever they may be, should be strictly followed by all concerned in the sale. (*Clark* v. *Lewis*, 35 Ill. 417; *Rounds* v. *Stetson*, 45 Maine, 596; *Gilmore* v. *Holt*, 4 Pick. 258; *Rounds* v. *Mansfield*, 38 Maine, 586. Thus, sale made only twenty minutes before the expiration of the time required by law was held illegal. *Smith* v. *Gates*, 21 Pick. 55.) Abridgment, for any period, of the required notice, avoids the sale. (*Clark* v. *Lewis*, 35 Ill. 417.) Also held, that actual knowledge by the owner of the beasts of the impounding thereof, was not equivalent to the *written notice* required by the statute. *Coffin* v. *Field*, 7 Cush. 355.) Unless there be a legal sale, the pound-keeper may be held to have forfeited the protection of the statute. *Sargeant* v. *Allen*, 29 U. C. Q. B. 384.) It has been held that a master is liable for the acts of his farm servant in impounding cattle in his absence, the servant acting within the scope of his authority. (*Spafford* v. *Hubble*, M.S. Easter Term, 7 Wm. IV.; R. & H. Dig. 294.) In trespass against two defendants for seizing and taking cattle, one defendant justified as pound-keeper; and because the cattle were in the close of A., wrongfully trespassing in said close, and eating grass and corn therein, A. took the said cattle and delivered them to the defendant as a pound-keeper within his jurisdiction, and the defendant impounded and afterwards sold them according to law; and the other defendant justified the seizure and the sale by the pound-keeper, as in the other plea, and that the defendant bought the cattle as the highest bidder; to both of which pleas there was a general demurrer. *Held*, that the plea by the pound-keeper was bad, as it did not show that he received the cattle from a person *within his division*, or that the close *was so situate*, and that the plea of the purchaser was good, as he could not be held liable to the plaintiff in trespass. (*Clarke* v. *Durham et al*, M.S. Easter Term, 3 Vic. R. & H. Dig. 431.) In a plea of justification by a pound-keeper for taking a pig, when the justification was that the pig, contrary to Township regulations, broke through a lawful fence, it was held necessary to allege that the fence was within that Township, and to show the close in which the pig was trespassing at the time. (*Carey* v. *Tate*, 6 O. S. 147.) A By-law enacting that certain animals specified shall not run at large, does not impliedly allow others not named to do so, contrary to the common law. (*Jack* v. *The Ontario, Simcoe and Huron Railroad Union Company*, 14 U. C. Q. B. 328.)

(*i*) An action of trespass will lie by the owner of a farm into which a neighbour's pigs may break, enter, and do damage, against the owner of the pigs, unless he can excuse the act for defect of fences or upon some other ground that ought to be specially pleaded. (*Blacklock* v. *Millikan*, 3 U. C. C. P. 34.) So trespass is maintainable against the owner of a bull which broke into the plaintiff's farm and there killed his mare, though the owner of the bull was not present at the time or aware of the fact. (*Mason* v. *Morgan*, 24 U. C. Q. B. 328.) If a horse, through the neglect of the owner in not keeping his fences properly repaired, stray out of the field in

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(4.) For determining the compensation to be allowed for services rendered, in carrying out the provisions of any Act, (*k*) with respect to animals impounded or distrained and detained in the possession of the distrainor. 29-30 V. c. 51, s. 354, sub. 1–4. Compensation with respect to impounding animals.

*Public Health.*

**382.** The members of every Township, City, Town and Incorporated Village Council shall be Health officers within their respective Municipalities, under the Consolidated Statute for Upper Canada, respecting the public health, and under any Act passed after this Act takes effect for the like purpose. (*l*) But any such Council may by By-law Members of council to be health officers. May delegate powers.

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which it is feeding, into the field of an adjoining proprietor, and there get among his horses and kicks one in such a way as to cause its death, such owner is liable in trespass for the injury which his horse has done. (*Lee* v. *Riley*, 12 L. T. N. S. 388.) Whether at common law the owner of a dog is answerable in trespass for every unauthorized entry of the animal into the land of another, as in the case of pigs, an ox, or a horse, is doubtful. (*Read* v. *Edwards*, 17 C. B. N. S. 245.) An action on the case lies against one who keeps a mischievous animal of any kind in respect of any damage done by such animal, where it can be shown that the owner knew of the mischievous propensity of the animal. (*Thomas* v. *Morgan*, 2 C. M. & R. 496; *Card* v. *Case*, 5 C. B. 622; *May* v. *Burdett*, 9 Q. B. 101.) If the owner, upon being told of the mischief done, offers to settle, this is some evidence of his knowledge that the animal was mischievous. (*Thomas* v. *Morgan*, 2 C. M. & R. 496; *Mason* v. *Morgan*, 24 U. C. Q. B. 328.) In New Hampshire, if animals are found "doing damage," they may be impounded, and appraisers are to ascertain "whether any damage was done." *Held*, that the statute contemplated *actual* and not merely nominal damages to justify impounding. (*Osgood* v. *Green*, 33 N. H. 318.)

(*k*) The compensation may be for services rendered with respect to animals impounded, distrained, or detained in the possession of the distrainor.

(*l*) This section is, in effect, the same as sec. 6 of the Public Health Act 36 Vic. cap. 43. The preservation of the public health is a matter of paramount municipal importance. (*Ex parte Shrader*, 33 Cal. 279; *Ashbrook* v. *Commonwealth*, 1 Bush. (Ky.) 139; *Harrison* v. *Baltimore*, 1 Gill. 264; *Gibbons* v. *Ogden*, 9 Wheat. 205.) A City Council having power to pass By-laws "to preserve health," was held to have the power to procure a supply of water by boring an artesian well, or otherwise, on a public square, as they saw fit. (*Livingston* v. *Pappin*, 31 Ala. 542; see also *Rome* v. *Cabot*, 28 Ga. 50; *Hale* v. *Houghton*, 8 Mich. 458; see further, sec. 384, sub. 1.) But it has been held that a Municipal Corporation owning lands on a water course distant from the city, had no right—unless acquired by purchase or by the exercise of the right of eminent domain—to divert water to the injury of other riparian proprietors. (*Stein* v. *Burden*, 24 Ala. 130.)

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delegate the powers of its members as such Health officers to a committee of their own number, or to such persons, either including or not including one or more of themselves, as the Council thinks best. (*m*) 29–30 V. c. 51, s. 248.

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(*m*) A By-law giving to a Board of Health "general supervision over the health of the city," and "all necessary power to carry the ordinance into effect," was held to include power to rent a building for a temporary hospital, to protect the city from an apprehended visitation of cholera, and to make the Corporation liable for the rent, although it did not become necessary to make use of the building. (*Aull* v. *Lexington*, 18 Mo. 401; *Barton* v. *New Orleans*, 16 La. An. 317; *Belcher* v. *Farrar*, 8 Allen, 325; *Commissioners* v. *Powe*, 6 Jones, (Law.) 134; *Hazen* v. *Strong*, 2 Vt. 427; *Wilkinson* v. *Albany*, 8 Fost. 9.) Such a Board would have power to make quarantine regulations. (*Dubois* v. *Augusta*, Dudley (Geo.) 30; *St. Louis* v. *McCoy*, 18 Mo. 288; *St. Louis* v. *Boffinger*, 19 Mo. 13; *Metcalfe* v. *St. Louis*, 11 Mo. 103; *Mitchell* v. *Rockland*, 41 Maine, 363; s. c., 45 Maine, 496.) Health officers may enter and examine any premises (36 Vic. cap. 43, s. 1), may order the cleansing of the same (*Ib.* sec. 2), and may destroy whatever, in their opinion, is necessary to destroy for the preservation of the public health (*Ib.* sec. 3); may, under certain circumstances, remove inhabitants from their dwelling houses (*Ib.* sec. 4), and remove persons infected with a dangerously contagious or infectious disease (*Ib.* sec. 5). The Lieutenant-Governor may, for purposes of health, under the Public Health Act, regulate the entry and departure of boats and vessels (*Ib.* sec. 7), and may by proclamation declare certain rigorous sections of the Act in force in any locality, to be mentioned in the proclamation (*Ib.* sec. 8), and may revoke or renew the proclamation (*Ib.* sec. 9). On the issue of the proclamation, the first five sections of the Act, unless declared to the contrary in the proclamation, are suspended (*Ib.* sec. 10), and five or more persons may be appointed a Central Board of Health (*Ib.* sec. 11). The revocation of the proclamation revokes the Board so appointed (*Ib.* secs. 12, 18). A Local Board of Health may also be appointed (*Ib.* secs. 13, 14) by the Municipal Corporation or Police Trustees (*Ib.* sec. 14), at a special meeting (*Ib.* sec. 15); on failure of which the Lieutenant-Governor may appoint the Local Board (*Ib.* sec. 16). Until such appointment, the ordinary Health officers of the Municipality are entitled to act (*Ib.* sec. 17). The Central Board is empowered to make regulations to prevent the spread of infection (*Ib.* secs. 19, 20, 23), and require the Local Board to execute them (*Ib.* sec. 21), and to remove inmates of infected houses (*Ib.* sec. 22), and otherwise enforce the regulations (*Ib.* sec. 25). The expenses of the Central Board are to be defrayed by the Government, and of the Local Boards by the Municipalities (*Ib.* sec. 26). On orders of the Local Board (*Ib.* sec. 27), the proclamation, regulations, &c., are to be published in the Ontario Gazette (*Ib.* sec. 28), and the Gazette is made conclusive evidence of the proclamation, &c. (*Ib.* sec. 29). Thereupon inconsistent By-laws of the Municipality are suspended (*Ib.* sec. 30). Wilful disobedience of regulations, &c., is made penal (*Ib.* secs. 31, 32). The penalties to be paid to the Treasurer of the Municipality (*Ib.* sec. 33), and may be prosecuted notwithstanding the repeal of the proclamation (*Ib.* sec. 34). No proceeding under

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DIVISION IV.—POWERS OF COUNCILS OF COUNTIES, CITIES AND SEPARATED TOWNS.

**383.** The Council of every County, City and Town separated from the County for municipal purposes, (*n*) may pass By-laws for the following purposes: By-laws may be made for—

*Engineers—Inspectors.*

(1.) For appointing, in addition to other officers, (*o*) one or more Engineers, and also one or more Inspectors of the House of Industry, also one or more Surgeons of the Gaol and other institutions under the charge of the Municipality, and for the removal of such officers; 29-30 V. c. 51, s. 286, sub. 1. Appointing engineers, inspectors, gaol surgeons, &c.

*Auctioneers.*

(2.) For licensing, regulating and governing Auctioneers and other persons selling or putting up for sale goods, wares, merchandise or effects by public auction; (*p*) and for fixing Auctioneers.

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the Act is to be vacated, quashed or set aside for want of form, or be removed or removable by *certiorari* or other process whatsoever (*Ib.* sec. 35).

(*n*) Incorporated Villages not included.

(*o*) The officers whose appointment is authorized are one or more—

1. Engineers;
2. Inspectors of the House of Industry, Surgeons of the Gaol and other institutions under the charge of the Municipality.

While it is believed that at common law Corporations have power to appoint such officers as the nature of their constitution requires, the implied power, if existing at all, should be sparingly exercised. (See note *r* to sec. 184. Power to appoint involves power to pay and to remove from office. (*Ib.*)

(*p*) Power to regulate the conduct of particular trades or callings involves the power to license, but this power must not be so exercised as to create a tax or a monopoly. (See note *f* to sub. 5 of sec. 379.) A person licensed by a City Corporation to carry on any particular trade or business, is in no sense the agent or servant of the Corporation, so as to render the latter responsible for his acts. (*Fowle* v. *Alexandria*, 3 Peters, 398; but see *Cole* v. *Nashville*, 4 Sneed. (Tenn.) 162.) The granting or refusing of a license is substantially the exercise of a judicial function. (*Duke* v. *Rome*, 20 Ga. 635.) The powers here conferred are to license, regulate and govern—

1. Auctioneers;
2. *Other* persons selling or putting up for sale goods, &c., by public auction.

In order to a sale by auction, within Eng. Stat. 50 Geo. III. cap. 41, s. 7, there must be an outcry, &c. (See *Allen* v. *Sparkhall*, 1 B. & Al. 100.) A City Council may prevent sales by auction on the public streets of the city. (*White* v. *Kent*, 11 Ohio St. 550; see also *Shelton* v. *Mobile*, 30 Ala. 540.)



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the sum to be paid for every such license, and the time it shall be in force; (*q*) 29-30 V. c. 51, s. 286, sub. 2.

*Hawkers and Pedlars.*

Licensing, &c., hawkers, pedlars, &c.

(3.) For licensing, regulating and governing Hawkers or petty Chapmen, and other persons carrying on petty trades, who have not become permanent residents in the County, City or Town, or who go from place to place or to other men's houses, on foot or with any animal bearing or drawing any goods, wares or merchandise for sale, or in or with any boat, vessel or other craft, or otherwise carrying goods, wares or merchandise for sale, (*r*) and for fixing the sum to be paid for a license for exercising such calling within the County, City or Town, and the time the license shall be in

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(*q*) Apparently no limit is given to the amount that may be exacted for the payment of the license, but it must be *reasonable*. (See sub. 13, of sec. 372, and notes thereto.)

(*r*) A single act of selling does not make a man a hawker, so as to require a license. (*The King* v. *Little*, 1 Burr. 609; *The King* v. *Buckle*, 4 East. 346; *Johnson* v. *Hudson*, 11 East. 180.) A licensed auctioneer, going from place to place and selling goods, was held to be a hawker. (*The King* v. *Turner*, 4 B. & Al. 510.) In order to constitute a person a hawker, it is not necessary that he should go to more towns than one and there sell goods. (*Manson* v. *Hope*, 6 L. T. N. S. 326; s. c. 2 B. & S. 498.) A person not having goods with him, but merely going about to solicit orders for goods, to be supplied from and by his master, was held not to be a hawker. (*The King* v. *McKnight*, 10 B. & C. 734; see also Eng. Stat. 24 & 25 Vic. cap. 21.) A cabinetmaker residing at Leicester and having a shop there, who sent goods to a place called Ashby-de-la-Zouch in a cart, which he accompanied on foot part of the way, and then went to Ashby-de-la-Zouch by the mail, where he employed an auctioneer for the sale of the goods, was held to be a trading person travelling from town to town, within the statute 50 Geo. III. cap. 41, s. 7. (*Attorney-General* v. *Woolhouse*, 1 Y. & J. 463; see also *Attorney-General* v. *Tongue*, 12 Price, 51.) Twelve ladies, of whom respondent was one, having purchased materials and made them up into articles of wearing apparel, each in turn for one month carried these articles about, in a basket called a missionary basket, from house to house for sale. The ladies did not find the money to purchase the materials, but the money derived from the sales was applied towards the purchase, and the profits of the sale were devoted to a village school and religious purposes. *Held*, that respondent did not come within the definition of a pedlar, as used in section 3 of the Pedlars' Act of 1871. (*Gregg* v. *Smith*, L. R., 8 Q. B. 302.) It was held necessary, to justify an arrest under our old Hawkers and Pedlars Act 58 Geo. III. cap. 5, for pedling without a license, that the person should be found trading at the time of the arrest. (See *Oviatt* v. *Bell*, 1 U. C. Q. B. 18.) It was also held necessary to the validity of a conviction for pedling goods without a license, that the description of goods should be specified in the conviction. (*The King* v. *Selway*,

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force; (*s*) and for providing the Clerk of the Municipality with licenses in this and the previous section mentioned, for sale to parties applying for the same in the Township under such regulations as may be prescribed in such By-law; (*t*) but no duty shall be imposed for hawking or peddling any goods, wares or merchandise the growth, produce or manufacture of this Province, not being liquors within the meaning of the law relating to taverns or tavern licenses; (*u*) 32 V. c. 43, s. 19.

Proviso as to duties on manufactures of this Province, &c.

*Ferries.*

(4.) For licensing or regulating Ferries between any two places within the Municipality, and establishing the rates of ferriage to be taken thereon; (*v*) but no such By-law as to Ferries shall have effect until assented to by the Governor in Council; (*w*) but until the Council pass a By-law regulating such Ferries, and in the cases of Ferries not between two places in the same Municipality, the Governor by order in Council may from time to time regulate such Ferries

Licensing, &c., with assent of Governor.

Ferries, &c.

Provision for particular cases.

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2 Chit. R. 522; *The King* v. *Smith*, 3 Burr. 1475.) To entitle a party to exemption from penalties on the ground that the place where the hawker exposed his wares for sale was a public market, it must be shown that it was a legally established market, and not merely a market *de facto*. (*Benjamin* v. *Andrews*, 5 C. B. N. S. 299; see further, Burn's Justice, Title, "Hawkers and Pedlars.")

(*s*) See note *q* to sub. 2 of this section.

(*t*) Money exacted for an illegal license may be recovered back in an action for money had and received. (*Lincoln* v. *Worcester*, 8 Cush. 55.)

(*u*) This is a Provincial exemption in favour of home production. A man may, without a license, hawk or peddle goods, wares and merchandise the *growth*, *produce* or *manufacture* of this Province not being liquor. If the goods, &c., be the growth, produce or manufacture of an adjoining Province, the exemption does not apply.

(*v*) See sec. 225, and notes thereto.

(*w*) This apparently requires *any* By-law, as to ferries, to be approved by the Governor in Council. The powers conferred are for

1. Licensing and regulating ferries between any two places in the Municipality.
2. Establishing the rates of ferriage to be taken thereon.

Had the words been, "but no such By-law as last mentioned shall have effect until," &c., there could have been no doubt that the only By-laws requiring executive consent are those establishing the rates of ferriage. The words, however, are, "but no such By-law *as to ferries*" (apparently intending all By-laws as to ferries before authorized) shall have effect until, &c. This would seem to make it essential to the validity of all By-laws under the section, that they receive the assent of the Lieutenant-Governor in Council.

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respectively, and establish the rates to be taken thereon, in accordance with the statutes in force relating to Ferries; (*x*) *Vide* 29-30 V. c. 51, s. 286, sub. 4.

*Lands for High Schools.*

Acquiring lands for High Schools, &c.

(5.) For obtaining in such part of the County, or of any City or Town separated within the County, as the wants of the people may most require, the real property requisite for erecting High School Houses thereon, and for other High School purposes, and for preserving, improving and repairing such School Houses, (*y*) and for disposing of such property when no longer required; (*z*) 29-30 V. c. 51, s. 288, sub. 1.

*Aiding High Schools.*

Aiding High Schools.

(6.) For making provisions in aid of such High Schools as may be deemed expedient; (*a*) 29-30 V. c. 51, s. 288, sub. 2.

*Supporting Pupils at University and High Schools.*

Supporting certain High School pupils at University of Toronto, and U. C. College, &c.

(7.) For making a permanent provision for defraying the expense of the attendance at the University of Toronto, and

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(*x*) The power of a Municipal Council is local. It can only be applied to the regulation of ferries *within* the Municipality. In the case of ferries not between two places in the same Municipality, the authority to regulate, &c., is vested in the Governor in Council exclusively.

(*y*) In 1807, an appropriation was made by the Legislature for the support of a public school "in each and every district" of Upper Canada, to be kept in places named. (47 Geo. 3, cap. 6.) This Act was repealed in 1853 by an Act intituled, "An Act to amend the law relating to Grammar Schools." (16 Vic. cap. 186, sec. 17.) The latter enacted that the Grammar Schools then existing should be continued at the places where they were respectively held, but authorized the Board of Trustees of each such school to change the places. (*Ib.* sec. 15.) As to Grammar Schools established after 14th June, 1853, the places may be changed by the County Council of the County within which the school is established.

(*z*) See note *c* to sub. 1 of sec. 372.

(*a*) The Council of each County, City, Township, Town, or Incorporated Village is authorized by Con. Stat. U. C. cap. 63, sec. 16, from time to time to levy and collect, by assessment, such sum or sums of money as it may deem expedient to purchase the site or sites, or to rent, build, repair, furnish, warm and keep in order a Grammar School House or Houses, for providing the salary of the teacher or teachers, and all other necessary expenses of such County Grammar School or Schools. The statute was held to be permissive not obligatory. (*In re Trustees Weston Grammar School and Counties of York and Peel*, 13 U. C. C. P. 423.) But now, see 34 Vic. cap. 33 (Ont.), ss. 36, 37, 38, 39 & 40; *In re Trustees of Port Rowan High School*, 23 U. C. C. P. 11.)

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at the Upper Canada College and Royal Grammar School there, of such of the pupils of the public High Schools of the County as are unable to incur the expense, but are desirous of, and, in the opinion of the respective masters of such High Schools, possess competent attainments for competing for any scholarship, exhibition, or other similar prize offered by such University or College; (*b*) 29-30 V. c. 51, s. 288, sub. 3.

Similar provision for attendance at High Schools.

(8.) For making similar provision for the attendance at any High School, for like purposes, of pupils of Common Schools of the County; (*c*) 29-30 V. c. 51, s. 288, sub. 4.

*Endowing Fellowships.*

Endowing fellowships in University of Toronto and U.C.College

(9.) For endowing such fellowships, scholarships or exhibitions, and other similar prizes in the University of Toronto, and in the Upper Canada College and Royal Grammar School there, for competition among the pupils of the Public High Schools in the County, as the Council deem expedient for the encouragement of learning amongst the youth thereof; (*d*) 29-30 V. c. 51, s. 288, sub. 5.

*Public Fairs.*

Authorising the holding, &c., of public fairs, and regulating same.

(10.) For authorizing, on petition of at least fifty qualified electors of the Municipality, the holding of public Fairs at one or more of the most public and convenient places (*e*) not separated from the Municipality for municipal purposes;

(*a.*) The purpose for which such Fairs may be held shall be restricted to the sale, barter and exchange of cattle, horses, sheep, pigs (*f*) and articles of agricultural production or requirement;

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(*b*) The provision to be made may be a permanent one. But it must not be for attendance at any other institution than that of the University of Toronto and Upper Canada College and Royal Grammar School.

(*c*) None are entitled to receive the benefit of the provision unless those who are themselves "unable to incur the expense." (See foregoing subsection.)

(*d*) Fellowships, Scholarships, or Exhibitions endowed under this clause, are to be for competition among the pupils of the public High Schools of the County.

(*e*) The place selected should not be *a public street.* (*Wartman* v. *Philadelphia*, 33 Pa. St. 202-210; *St. John* v. *New York*, 3 Bosw. (N.Y.) 483; *State* v. *Mobile*, 5 Port. 279; *Commonwealth* v. *Rush*, 14 Pa. St. 186; *Commonwealth* v. *Bowman*, 3 Pa. St. 202, 206.)

(*f*) The grant of a fair does not of itself imply a right in the grantee to prevent persons from selling marketable articles in their

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(*b*.) The By-law to authorize the establishment of any such fair, shall establish rules and regulations for the government of the same, and appoint a person whose duty it shall be to have them carried out, (*g*) and shall also fix the fees to be paid him by persons attending the said fair; (*h*)

Public notice of by-law establishing same.

(*c*.) The Council authorizing the establishment of a public fair shall, immediately after the passing of a By-law for that purpose, give public notice of the same. (*i*) 34 V. c. 21, sub. 1–4.

DIVISION V.—POWERS OF COUNCILS OF CITIES, TOWNS AND INCORPORATED VILLAGES.

By-laws may be made for—

**384.** The Council of every City, Town and Incorporated Village (*a*) may pass By-laws for the following purposes:

*Water.*

Establishing, &c., public wells, reservoirs, &c.

(1.) For establishing, protecting and regulating public wells, reservoirs and other conveniences for the supply of

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private shops on market days. (*Macclesfield* v. *Chapman*, 12 M. & W. 18). A person who, at such a fair, exposes goods for sale has a right to occupy the soil with baskets necessary and proper for containing the goods. (*Townend* v. *Woodruff*, 5 Ex. 506.)

(*g*) The regulation of fairs and markets in England by By-law has long been a subject of Municipal control. (*Player* v. *Jenkins*, 1 Sid. 284; *Pierce* v. *Bartrum*, Cowp. 270; *The King* v. *Cotterill*, 1 B. & Ad. 67. See also *Mosley* v. *Walker*, 7 B. & C. 40; *Macclesfield* v. *Pedley*, 4 B. & Ad. 397.) So in the United States, *Cincinnati* v. *Buckingham*, 10 Ohio, 257; *Wartman* v. *Philadelphia*, 33 Pa. St. 202; *LeClaire* v. *Davenport*, 13 Iowa, 210; *White* v. *Kent*, 11 Ohio St. 550; *Ash* v. *People*, 11 Mich. 347; *St. John* v. *New York*, 6 Duer. 315; *St. Louis* v. *Jackson*, 25 Mo. 37; *St. Louis* v. *Weber*, 44 Mo. 547; *Cangot* v. *New Orleans*, 16 La. An. 21; *Nightingale's Case*, 11 Pick. 168; *Buffalo* v. *Webster*, 10 Wend. 100; *Yates* v. *Milwaukee*, 12 Wis. 673; *Ketchum* v. *Buffalo*, 14 N. Y. 356; *Municipality* v. *Cutting*, 4 La. An. 335; *State* v. *Lieber*, 11 Iowa, 407; *Dubuque* v. *Miller*, *Ib.* 583; *St. Paul* v. *Coulter*, 12 Minn. 41; *Atlanta* v. *White*, 33 Geo. 229; see further, note *d* to sub. 3 of sec. 384.)

(*h*) The grant of a fair, merely with all the liberties and powers usually appertaining to such right, does not give a right to take tolls. (*Egremont* v. *Saul*, 6 A. & E. 924.) A grant of a fair with an express grant of toll passes reasonable toll, though no toll be specified. (*Stamford* v. *Pawlett*, 1 C. & J. 57.) A toll of one penny for every pig is not necessarily an unreasonable toll. (*Wright* v. *Bruister*, 4 B. & Ad. 116.)

(*i*) The mode of giving public notice is not specified, but publication in some widely circulated newspaper in the locality would no doubt in this case be sufficient. (See *Keckely* v. *Commissioners of Roads*, 4 McCord, (S. Car.) 257.)

(*a*) Counties not included.

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water, and for making reasonable charges for the use thereof, and for preventing the wasting and fouling of public water;(*b*) 29-30 V. c. 51, s. 296, sub. 5.

*Markets, &c.*

(2.) For establishing markets; (*c*) 29-30 V. c. 51, s. 296, sub. 6. Establishing markets.

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(*b*) A pure supply of water is an essential of health. (See note *l* to sec. 382.) Power to provide and regulate the supply of water is therefore a necessary Municipal power where public health is of public concern. (*Ib.*) The powers here conferred are:

1. For establishing, protecting and regulating public wells, reservoirs and other conveniences for the supply of water;

2. For making reasonable charges for the use thereof;

3. For preventing the wasting and fouling of public water.

Running water is originally *publici juris*. (*Williams* v. *Morland*, 2 B. & C. 910.) All may reasonably use it who have a right of access to it. (*Embrey* v. *Owen*, 6 Ex. 353.) Water as it issues from a well or spring is not to be considered as produce of the soil. (*Race* v. *Ward*, 4 E. & B. 702.) A Corporation was empowered by statute to erect a reservoir near a river, and on completion to divert the waters of the river, discharging down the river seventy-five cubic feet of water per second for twelve hours of every working day. The Corporation began, but was prevented by the nature of the ground from completing the reservoir. They diverted the water, and discharged down the river more than its natural flow but less than the quantity required by the statute. *Held*, that riparian proprietors could at common law recover for any damage sustained by the diversion of the water, but could not recover for failure to comply with the statutory requirement. (*Waller* v. *Manchester*, 6 H. & W. 667.)

(*c*) Power to establish a market authorizes, as a necessary incident, the acquirement of land on which to erect market buildings. (*Ketchum* v. *Buffalo*, 14 N. Y. 356; *Caldwell* v. *Alton*, 33 Ill. 416; *People* v. *Lowber*, 28 Barb. 65.) So it is incident to the general power to decide on the cost, dimensions, &c. (*Peterson* v. *New York*, 17 N. Y. 449; but see *Spaulding* v. *Lowell*, 23 Pick. 71, 80.) But the establishment of a market ought not to be in a public street. (See note *e* to sub. 10 of sec. 383.) Where the defendants leased to plaintiff the market fees of a wood market, established in one of the public streets of the city, covenanting against their own interference, &c. *Held*, that the market being fixed in a public highway, which is *prima facie* for purposes of public travel, the exercise of the rights incident to such market must be subordinate to the primary and principal purposes of the highway, and that plaintiff could not recover damages for interference by the user of the public of the highway. (*Reynolds* v. *Toronto*, 15 U. C. C. P. 276.) Markets may be abandoned or changed at the will of the Council and new sites acquired. (*Gall* v. *Cincinnati*, 18 Ohio St. 563.) A Municipal Corporation has a clear right at common law to change the site of a market. (*Ellis* v. *Bridgnorth*, 2 Johns. & H. 67; s. c. 4 L. T. N. S. 112.) But if, instead of availing themselves of the common law

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Regulating markets.

Old markets continued.

(3.) For regulating all markets established and to be established; the places, however, already established as markets in such Municipality shall continue to be markets, and shall retain all the privileges thereof until otherwise directed by competent authority; (*d*) and all market reser-

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right, they assume to do so under some particular statute, the provisions of that statute must be followed. (*Ib.*) The removal cannot be effected to the prejudice of those who have acquired privileges in the market. (*Ellis* v. *Bridgnorth*, 15 C. B. N. S, 52; see also *Wortley* v. *Nottingham Local Board*, 21 L. T. N. S. 582; *Dorchester* v. *Ensor*, L. R. 4 Ex. 335.) The public should have the same privileges in the new market as the old (*The King* v. *Starkey*, 7 A. & E. 95), but have no right to continue to use the site of the old market after removal of the market. (*Curwen* v. *Salkeld*, 3 East. 538; *The King* v. *Cotterill*, 1 B. & Ad. 67.)

(*d*) The regulation of fairs and markets has for a long time been the subject of Municipal control in England and the United States. (See note *g* to sec. 383, sub. 10 *b*.) Regulation must of necessity include the appropriation of one or more parts of the market for one purpose, and other part or parts for other purposes: of providing that free passage through the market be kept open for ready access to shops, stalls, or other places where different commodities are exposed for sale. (*Per* Draper, C. J., in *Kelly* v. *Toronto*, 23 U. C. Q. B. 426.) But the right, under the power to regulate, to restrict the sale of commodities to the public market is open to doubt. Some of the subsequent subsections expressly empower Municipal Councils to restrict the sale of commodities therein mentioned to the place established as a market place. From this it might be argued that, except as to the commodities mentioned, the power to restrict the sale to the market place does not exist. On the other hand, in some of the English statutes exemptions are made in favour of the sale in the owner's shop of certain commodities specified. From this it might be argued that, except as to these, there was power to restrict sales to the market place. The general question is surrounded with difficulties. "The fixing of the place and times at which markets shall be held and kept open, and the prohibition to sell at other places and times, is among the most ordinary regulations of a City or Town Police, and would naturally be included in the general power to pass By-laws relative to the public markets. If the Corporation had not the power in question, it is difficult to see what useful purpose could be effected, or what object was intended, by the grant of the power to pass laws relative to public markets. The mere regulation of the building and of the stalls of those who might choose to go there instead of elsewhere to sell their market provision, would be an idle and useless power, and of no moment toward the good government of the village." (*Per Cur.* in *Bush et al* v. *Seabury*, 8 Johns. 418; see also *Pierce* v. *Bartrum*, Cowp. 269.) The same doctrine is maintained in *Davenport* v. *Kelly*, 7 Iowa, 102; *Buffalo* v. *Webster*, 10 Wend. 100; *In re Nightingale*, 11 Pick. 168; *Raleigh* v. *Sorrell*, 1 Jones (N. Car.) 49; *Stokes* v. *New York*, 14 Wend. 87; *LeClaire* v. *Davenport*, 13 Iowa, 210.) Such ordinances are sustained on the ground that they are not in restraint of trade, but in regulation of it. (*Wensboro* v. *Smart*, 11 Rich. (S. Car.) Law, 551; see

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vations or appropriations heretofore made in any such Municipality, shall continue to be vested in the Corporation thereof; 29-30 V. c. 51, s. 296, sub. 7.

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also *St. Louis* v. *Jackson*, 25 Mo. 37.) But it has been held, by equally good authority, that the power to regulate markets can only extend to the market limits, and that these limits cannot be made to extend throughout the city. (*Caldwell* v. *Alton*, 33 Ill. 416; see also *Dunham* v. *Rochester*, 5 Cowp. 462; *Shelton* v. *Mobile*, 30 Ala. 540; *St. Louis* v. *Webber*, 44 Mo. 547; *Le Claire* v. *Davenport*, 13 Iowa, 210; *Davenport* v. *Kelly*, 7 Iowa, 102; *Ash* v. *People*, 11 Mich. 347.) So under an ordinance "to erect market houses, establish markets and market places, and provide for the government and regulation thereof," it was held that the Council had no power to fix upon one market place and prohibit all persons at all hours of the day from selling fresh meat elsewhere. (*Bloomington* v. *Wahl*, 46 Ill. 489; see also *Bethune* v. *Hughes*, 28 Geo. 560; *St. Paul* v. *Laidler*, 2 Minn. 190; *St. Louis* v. *Webber*, 44 Mo. 547; *St. Paul* v. *Coulter*, 12 Minn. 41; *Rochester* v. *Pettinger*, 17 Wend. 265.) A By-law enacting "that no butcher or other person shall cut up or expose for sale any fresh meat in any part of the city, except in the shops and stalls in the public markets, or at such places as the Standing Committees on Public Markets may appoint," was held good by our Court of Queen's Bench. (*In re Kelly and Toronto*, 23 U. C. Q. B. 425.) This, in the same Court, was afterwards affirmed in *Fennell and Guelph*, 24 U. C. Q. B. 238, and treated as settled in that Court. (*Snell and Belleville*, 30 U. C. Q. B. 91.) The rule in the last case was in part discharged and in part made absolute; and although leave to appeal was given, inasmuch as the By-law was not quashed, no appeal could be had. (Con. Stat. U. C. cap. 13, sec. 28.) The law of appeal has, in this particular, been since amended and extended. (34 Vic. cap. 11, Ont.) In England and Ireland most of the markets are franchises, extending over the whole or greater part of the towns in which situate. (*Cork* v. *Shinkwin*, Smith & Bat. 395.) And as the erection of a new market is *prima facie* injurious to an old one, there is, in the case of a market by prescription, the right to prevent the erection of a new market "within the common law distance of the old market." (*In re Islington Market Bill*, 3 C. & F. 513.) And in such cases there is the right, so long as there is room in the market for the sale of articles ordinarily sold there, to prevent sales elsewhere. (*Prince* v. *Lewis*, 5 B. & C. 363.) A right, by custom, to exclude persons from selling marketable articles in their shops on market days without the limits of the market, has therefore been held valid. (*Macclesfield* v. *Pedley*, 4 B. & Ad. 397.) A sale, by sample, on a market day near to but without the limits of the market, has, however, been held not to be a disturbance of the market, unless done designedly and with the intention to evade payment of toll. (*Brecon* v. *Edwards*, 1 H. & C. 51.) If the grantee of a market under letters patent from the Crown, suffers another to erect a market in his neighbourhood, and use it for the space of twenty-three years without interruption, he is, by such use, barred of his action for disturbance of the market. (*Holcroft* v. *Heel*, 1 B. & P. 400.) A market held in the same town with an old market, if held upon the same day, is a disturbance by intendment of law (*Dorchester* v. *Ensor*, L. R.

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Regulating vending in streets, &c.

(4.) For preventing or regulating the sale by retail in the public streets, or vacant lots adjacent thereto, (*e*) of any

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4 Ex. 335); but if held on a different day, is only evidence of disturbance. (*Ib.*) Some of the decisions under English Market Acts may be here noticed. By a Market Act every person who shall sell or expose for sale at any place within the limits of the Act (other than in the existing market place, or the market house or market places to be established under the Act, or in his own dwelling house, or in any shop attached to and being part of a dwelling house) any article in respect of which tolls are by the Act authorized to be taken, other than eggs, butter and fruit, was subjected to a penalty. *Held*, that a vessel moored to a wharf was not a shop within the meaning of the exemption. (*Wiltshire* v. *Baker*, 11 C. B. N. S. 237.) But to bring a case under the exemption of the Act, the shop need not be attached to any part of the dwelling house of the party himself. (*Wiltshire* v. *Willett*, 11 C. B. N. S. 240; see further, *Ashworth* v. *Heyworth*, L. R. 4 Q. B. 316; s. c. 10 B. & S. 309.) In order to exempt from a penalty under this Act, a party must be shown to have sold the marketable articles in what is really his own private shop, and not in such a way as to constitute a different market from the legal one. (*Pope* v. *Whalley*, 6 B. & S. 303; *Fearon* v. *Mitchell*, L. R. 7 Q. B. 690.) A horse was held to be "an article" within the meaning of the statute (*Llandaff, &c. Market Co.* v. *Lynden*, 8 C. B. N. S. 515.) A person who sold fruit and fish, which are marketable articles, from door to door, within the prescribed limits, was held not thereby to have incurred the penalty. (*Caswell* v. *Cook*, 11 C. B. N. S. 637.) A party who bought vegetables from a wholesale dealer in the market, who had previously paid fees thereon, and afterwards offered them for sale in the streets, was in a subsequent case held liable to fees. (*Black* v. *Sackett*, 10 B. & S. 639.) Upon the construction of a local Act establishing a market for corn, &c., in the city of Cork and its suburbs, it was held that fees were not leviable upon a sale made in the vendor's own house within the city, of corn then being outside of the city and its suburbs. (*Webber* v. *Adams*, 5 Ir. C. L. R. 146.)

(*e*) There cannot be much doubt as to the meaning of this subsection. Besides the word "regulate," used in the previous subsection, it has the word "prevent." One can readily understand why there should be power to prevent the sale of the articles mentioned "in the public streets." (See note *c* to sub. 2 of this section.) One can also suggest a good reason why sales should not be in "vacant lots adjacent thereto." (See *Nightingale Petitioner, &c.*, 11 Pick. 168; *Commonwealth* v. *Rice*, 9 Met. 253; *Shelton* v. *Mobile*, 30 Ala. 540; *Wartman* v. *Philadelphia*, 33 Pa. St. 202.) But the question still remains, whether there is power to prevent the sale of the articles named in ordinary shops in the Municipality. A By-law enacting "that no person should expose for sale any meat, fish, poultry, eggs, butter, cheese, grain, hay, straw, cordwood, shingles, lumber, flour, wool, meal, vegetables or fruit (except wild fruit), hides or skins, within the town, at any place but the public market, without having first paid the market fee thereon as therein provided, except all hides and skins from animals slaughtered by the licensed butchers of the Corporation holding stalls in the market," was held bad. (*In re Fennel and Guelph*, 24 U. C. Q. B. 238.)

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meat, vegetables, grain, hay, fruit, beverages, small ware and other articles offered for sale; (*f*) 33 V. c. 26, s. 5.

(5.) For preventing or regulating the buying and selling of articles or animals exposed for sale or marketed; (*g*) 29-30 V. c. 51, s. 296, sub. 9. Regulating sales, &c.

(6.) For regulating the place and manner (*h*) of selling and weighing grain, meat, vegetables, fish, hay, straw, fodder, wood, lumber, shingles, farm produce of every description, small ware and all other articles exposed for sale, (*i*) and the fees to be paid therefor; (*k*) and also for preventing Sale of grain, butcher's meat, farm produce, small ware, &c.

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(*f*) "And *other* articles offered for sale." This is really so indefinite as to leave a doubt as to what is meant. Such a provision should be more certain in its terms. Probably the general words will be controlled by the particular words which precede them. (See note *r* to sec. 370.)

(*g*) "Preventing or regulating the buying and selling of *articles or animals* exposed for sale or marketed." It is, in the first place, assumed that an "animal" is not "an article." Then the power is to *prevent* as well as regulate the buying and selling of articles *and* animals. It is very difficult to say what the Legislature really meant by the use of language so indefinite in a matter of such importance to every community. "The power to prevent or regulate the buying and selling of articles exposed for sale or marketed is more extensive than the Legislature could *probably* have intended to give, and would, if literally exercised, cover almost any enactment." (*Per* Wilson, J., in *Snell* v. *Belleville*, 30 U. C. Q. B. 91.)

(*h*) This is the first subsection that provides for regulating "the *place* and manner." Power to regulate the place has, by the Court of Queen's Bench here, been held to include the power to restrict sales to a place such as the market. (See note *c* to sub. 2 of this section.)

(*i*) And all other articles. (See note *f* to sub. 4 of this section.)

(*k*) A By-law prohibiting any person bringing produce, articles, commodities, or things to a City market from selling or offering the same for sale within the City limits on their way to market, or without having paid market toll, and before offering such things for sale in the market, was held bad. (*Kinghorn and Kingston*, 26 U. C. Q. B. 130.) "The statute gives no authority for the passing of a By-law of so wide and general a character as the one now in question, or containing such conditions as it does. The provisions of the statute are specific and limited, and the By-law should be restricted in its operation to the purposes and articles mentioned in the different subsections; and by doing so, the very proper object the Municipality had in view would have been effected." (*Per* Morrison, J., *Ib.* 134.) The same Court afterwards held that a By-law that "no person shall buy, sell or offer for sale any game, fish, poultry, eggs, butter, cheese, grain, vegetables or fruits exposed for sale or marketed within the town *until* the seller has paid the market fees required by By-law No. 161, or has obtained a ticket from the

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criers and vendors of small ware from practising their calling in the market, public streets and vacant lots adjacent thereto; (*l*) 33 V. c. 26, s. 6.

Preventing forestalling, &c.

(7.) For preventing the forestalling, regrating or monopoly (*m*) of market grains, wood, meats, fish, roots, vegetables, poultry and dairy products, eggs and all articles required for family use, and such as are usually sold in the market; 29-30 V. c. 51, s. 296, sub. 11.

Regulating hucksters, &c.

(8.) For preventing and regulating the purchase of such things by hucksters, grocers, butchers or runners; (*n*) 29-30 V. c. 51, s. 296, sub. 12; 31 V. c. 30, s. 32; 34 V. c. 30, s. 2.

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Collector of Tolls of the market of the town, as provided in the 27th section of Bylaw No. 161, and before the hour of nine o'clock in the forenoon during the months of June, July and August, and ten o'clock during the rest of the year," was good. (*In re Snell* v. *Belleville*, 30 U. C. Q. B. 81-92.) There had been some changes in the law between the two decisions, but whether sufficient to cause such a change in the decisions may be a question. A person brought sheep to a public house forty yards out of the limits of a market, left them there, went into the market in search of customers, whom he took to the public house, and there sold the sheep. *Held*, a fraud on the market, for which the seller was liable to an action by the lessee of the market. (*Bridgland* v. *Shafter*, 5 M. & W. 375; see further, *Brecon* v. *Edwards*, 1 H. & C. 51; *Blakly* v. *Dinsdale*, Cowp. 664.)

(*l*) See note *g* to sub. 5 of this section.

(*m*) Engrossing or regrating is a common law offence. (*The King* v. *Waddington*, 1 East. 143.) It applies only with respect to the necessaries of life. (*Pettamberdass* v. *Thackoorseydass*, 7 Moore N. C. 239.) Where several incorporated companies and individuals, engaged in the manufacture of salt, entered into an agreement, whereby it was stipulated that the several parties agreed to combine and amalgamate under the name of "The Canadian Salt Association," for the purpose of successfully working the business of salt manufacture, and which provided that all parties to it should sell all salt manufactured by them through the trustees of the association and not otherwise, it was held that the agreement was a valid one, and not void as against the old common law offence of engrossing. (*Ontario Salt Co.* v. *Merchants' Salt Co.*, 18 Grant, 540.) "I must conclude that long usage has brought about such a change in the common law since the decision in *The King* v. *Waddington*, that even if it could be said that the object of the parties to the agreement in question here was to enhance the price of salt, the contract would be neither illegal nor against public policy." (*Per* Strong, V. C., *Ib.* 543.) A By-law that "no person shall forestall, regrate or monopolize any market grains, meats, fish, fruits, roots, vegetables, poultry and dairy products within the Town," was held good, because it repeats "*the obsolete English provisions*" enacted in the section, and "*does nothing more.*" (*In re Snell and Belleville*, 30 U. C. Q. B. 92; see further, *In re Fennell and Guelph*, 24 U. C. Q. B. 238.)

(*n*) A By-law that no butcher, huckster or runner should, between certain hours of the day, buy or contract for any kind of fresh meat

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(9.) For regulating the mode of measuring or weighing (as the case may be) of lime, shingles, laths, cordwood, coal and other fuel; (*o*) 29-30 V. c. 51, s. 296, sub. 13. Measuring, &c., certain articles.

(10.) For imposing penalties for light weight or short count, or short measurement in anything marketed; (*p*) 29-30 V. c. 51, s. 296, sub. 14. Penalties for light weight, &c.

(11.) For regulating all vehicles, vessels, and all other things in which anything is exposed for sale or marketed, and for imposing a reasonable duty thereon, and establishing the mode in which it shall be paid; (*q*) 29-30 V. c. 51, s. 296, sub. 15. Regulating vehicles used in market vending.

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or provisions, such as are usually sold in the market, "on the roads, streets, &c., within the Town, *or within one mile distant therefrom*," was held bad. (*In re McLean and St. Catharines*, 27 U. C. Q. B. 603.) "Such a By-law is quite inconsistent with the rights and jurisdiction of the neighbouring Municipality." (*Per* Morrison, J., *Ib.* 604; also so held *In re Snell and Belleville*, 30 U. C. Q. B. 81.) A By-law, "that before 10 a.m. during May, June, July and August no huckster, butcher, dealer, trader, runner, agent or retailer, or any other person purchasing for export or to sell again, should buy, bargain for, engage, or offer to buy any article of household consumption brought to the market, excepting pork, grain, flour, meal or wool," was, except as to *hucksters* and *runners*, held bad. (*In re Fennell and Guelph*, 24 U. C. Q. B. 238.) The foregoing were decisions under 29 & 30 Vic. cap. 51, s. 296, sub. 12. That section was afterwards amended by the addition of the word "butchers" (31 Vic. cap. 30, s. 32, Ont.), and again by striking out the words "living within the Municipality, or within one mile from the outer limits thereof." (34 Vic. cap. 30, s. 2, Ont.)

(*o*) See sub. 29 of sec. 379, and notes thereto.

(*p*) See sub. 29 of sec. 379, and notes thereto.

(*q*) This does not authorize the imposition of tonnage dues on scows, crafts, rafts, railway cars, &c., coming into the Municipality merely because they contain firewood, though such firewood may have been brought into the Municipality for the purpose of being exposed or offered for sale or marketed for consumption within the Municipality. What the statute authorizes is the regulating the vehicles, vessels, &c., *in which* anything *is exposed for sale* or marketed, and for imposing a reasonable duty thereon. When the commodity is exposed for sale, the power to impose the duty, if it is really given, arises, and if it be intended to impose the duty on the vehicle or vessel, it must be on that in which the article is exposed for sale or marketed in any street or public place. The Legislature never contemplated that, under pretence of passing a By-law to regulate markets, any Municipal Corporation should have the power of levying a tax on the general commerce of the country merely because a particular Town or City happened to be the place where forwarders are in the habit of transhipping commodities from one description of craft to another, and where merchants frequently contract that certain articles in which they deal shall be delivered, in view of this very practice of transhipment. (*In re Campbell and*

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Assize of bread, &c.

(12.) For regulating the assize of bread, and preventing the use of deleterious materials in making bread; and for providing for the seizure and forfeiture of bread made contrary to the By-law; (*r*) 29-30 V. c. 51, s. 296, sub. 16.

Sale of meat distrained.

(13.) For selling, after six hours' notice, butchers' meat distrained for rent of market-stalls; (*s*) 29-30 V. c. 51, s. 296, sub. 18.

*Tainted Meat.*

Tainted provisions.

(14.) For seizing and destroying all tainted and unwholesome meat, poultry, fish, and other articles of food; (*t*) 29-30 V. c. 51, s. 296, sub. 17.

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*Kingston*, 14 U. C. C. P. 288.) A clause in a By-law which imposed tonnage dues on scows, crafts, rafts, railway cars, &c., coming into the City of Kingston, containing firewood to be exposed or offered for sale or marketed for consumption within the City, was therefore held bad. (*Ib.*)

(*r*) See sub. 30 of sec. 379, and notes thereto.

(*s*) Trespass lies for setting tables on a market place for the sale of goods without the permission of the owners. (*Norwich* v. *Swann*, 2 W. Bl. 1116; see *Doe St. Julian, Shrewsbury* v. *Cowley*, 1 C. & P. 123.) Permission of the owners must therefore be first obtained. (*Northampton* v. *Ward*, 2 Str. 1238.) Stallage is the payment due to the owners of a market in respect of the exclusive occupation of a portion of the soil. (*Yarmouth* v. *Groom*, 1 H. & C. 102; see also *The Queen* v. *Cassvell*, L. R. 7 Q. B. 328.) The question what constitutes a stall is a question of fact for a jury. (*Ib.*) A Court of Equity will require the right of stallage to be decided at law before granting an injunction to restrain a Corporation from interfering with such rights of stallage where the right is not admitted by the Corporation. (*Ellis* v. *Bridgnorth*, 2 Johns. & H. 67; s. c. 4 L. T. N. S. 112.) An action at law will lie by the owners of a market for stallage. (*Newport* v. *Saunders*, 3 B. & Ad. 411.) This subsection appears to authorize a distress for rent and a sale after six hours' notice. It is presumed that before any distress can be justified the relation of landlord and tenant must exist. (*Woelpper* v. *Philadelphia*, 38 Pa. St. 203; *Dubuque* v. *Miller*, 11 Iowa, 503.) The relation of landlord and tenant at a rent certain of a corporeal hereditament, gives the right of distress at common law; but at common law there was no right to sell a distress which was looked upon as a mere pledge for payment of rent. The statute 2 W. & M. sess. 1, cap. 5, sec. 2, which provided that after the goods distrained have been appraised, the landlord "shall and may lawfully sell the goods and chattels so distrained for the best price that can be gotten for the same," &c., at the same time provided that the sale should not be made until *after the expiration of five days* from the seizure. This restriction in the case of butchers' meat is, for obvious reasons, removed, and power given to sell "after six hours' notice." A By-law requiring a butcher, before getting a stall, to procure a licence and pay a fee, is bad. (*In re Snell and Belleville*, 30 U. C. Q. B. 81.)

(*t*) It has been held that the City authorities may, under their general powers to regulate markets, require oysters, which have a

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*Nuisances.*

(15.) For preventing and abating public nuisances; (*u*) 29-30 V. c. 51, s. 296, sub. 20. Abatement of nuisances.

great tendency to putrefaction, to be sold at certain designated stands, and prevent their being sold elsewhere. (*Municipality* v. *Cutting*, 4 La. An. 335; *Morano* v. *Mayor*, 2 La. An. 218.) But if any meat, poultry, fish, or other articles of food become so far tainted as to be unwholesome, express power is given here for the passage of By-laws providing for their seizure and destruction. Such a power, though an extreme one, is perfectly legal. (See note *m* to sub. 10 of sec. 379.)

(*u*) The power is to *prevent* and *abate* public nuisances. Nuisances are of two kinds: public or common nuisances, which affect people generally, and private nuisances, which may be defined as anything done to the hurt of the lands, tenements or hereditaments of another. (Russell on Crimes, 4th Ed. 435.) That which affects only three or four persons is a private and not a public nuisance. (*The King* v. *Lloyd*, 4 Esp. 200.) The mere declaration by a City Council that a structure is a public nuisance does not make it so, unless it in fact have that character. (*Per* Miller, J., in *Yates* v. *Milwaukee*, 10 Wall. 497; see also *Underwood* v. *Green*, 42 N.Y. 140; *Crosby* v. *Warren*, 1 Rich. Law (S. C.) 385; *Roberts* v. *Ogle*, 30 Ill. 459; *Salem* v. *Railroad Co.*, 98 Mass. 431; *Dingley* v. *Boston*, 100 Mass. 544; *Lake View* v. *Leta*, 44 Ill. 81; *Van Dyke* v. *Cincinnati*, 5 Disney, 532; *Wreford* v. *People*, 14 Mich. 41; *State* v. *Jersey City*, 5 Dutch. (N. J.) 170; *Welch* v. *Stowell*, 2 Doug. (Mich.) 332; *Kennedy* v. *Board of Health*, 2 Pa. St. 366; *Green* v. *Savannah*, 6 Geo. 1; *Clark* v. *Mayor*, 13 Barb. 32; *Saltonstall* v. *Banker*, 8 Gray, 195.) The term "nuisance" is well understood, and means literally annoyance—anything that worketh hurt. (*The King* v. *White*, 1 Burr. 333; *The King* v. *Davey*, 5 Esp. 217; *Burdett* v. *Swenson*, 17 Tex. 489.) It is not necessary, to constiute a nuisance, to show that the smell, &c., produced should be unwholesome. It is enough if it renders the enjoyment of life and property uncomfortable. (*Per* Lord Mansfield, in *The King* v. *White et al*, 1 Burr. 337; see also *The King* v. *Neill*, 2 C. & P. 485.) "If there be smells offensive to the senses, that is enough, as the neighbourhood has a right to fresh and pure air." (*Per* Abbott, C. J., *Ib.*) "The only question, therefore, is, is the business (slaughter house), as carried on by the defendant, productive of smells to persons passing along the public highway?" (*Ib.*) A By-law providing "that no person shall keep a slaughter house within the city without a special resolution of the Council" is bad, as tending to create a monopoly. (*In re Nash and McCracken*, 33 U. C. Q. B. 181.) A resolution of Council or license from the Corporation is no defence to a prosecution for a public nuisance. (*The King* v. *Cross*, 2 C. & P. 483.) "This certificate is no defence; and even if it were a license from all the Magistrates in the County to the defendant to slaughter horses in this very place, it would not entitle the defendant to continue the business there one hour after it became a public nuisance to the neighbourhood." (*Per* Abbott, C. J., *Ib.* 484.) "If the defendant's slaughtering house was so conducted as to be a public nuisance at common law, the Parish might at any time have caused it to be removed; and I am clearly of opinion that in this case it was so conducted as to be a nuisance at common law, and that the defendant would not have

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been and is not entitled to any compensation." (*Per* Abbott, C. J., in *The King* v. *Watts*, 2 C. & P. 487, 488.) It was in this case proved that smells proceeded from the slaughter house which were a great nuisance to persons passing along the public highway. (*Ib.*) If a certain noxious trade is already established in a place remote from habitation and public roads, and persons afterwards come and build houses within reach of its noxious effects, or if a public road be made so near to it that the carrying on of the trade becomes a nuisance to the persons using the road, in those cases the party would be entitled to continue his trade, because his trade was legal before the erection of the houses in the one case, and the making of the road in the other. (*Per* Abbott, C. J., in *The King* v. *Cross*, 2 C. & P. 484.) But if the man so situated increase the nuisance by the manner or extent to which he carries on the trade, he is liable to indictment. (*The King* v. *Watts*, M. & M. 281; *The King* v. *Neville*, 1 Peake, 92.) In countries, however, where great works are carried on, which are the means of developing national wealth persons must not stand on extreme rights. (*Bamford* v. *Turnley*, 3 B. & S. 62, 66; *Tippiny* v. *St. Helens Smelting Co.*, 4 B. & S. 608; s. c. 11 H. L. C. 642; *Gaunt* v. *Fynney*, L. R. 8 Ch. App. 8; *Harrison* v. *Good*, L. R. 11 Eq. 338.) The power to abate a public nuisance is a portion of police authority necessarily vested in the Corporations of all public towns. (*Per* Buchanan, J., in *Kennedy* v. *Phelps*, 10 La. An. 227; see also *Gregory* v. *Railroad Co.*, 40 N. Y. 273.) But a private individual cannot justify damaging the property of another on the ground that it is a public nuisance unless it do him a special and particular injury. (*Dimes* v. *Petley*, 15 Q. B. 276.) A distinction must be drawn between a house which is a nuisance *per se*, and one that is only a nuisance by reason of its use or abuse. In the latter case there is no legal right to destroy the property. (See note *t* to sub. 34 of sec. 379.) In several parts of England public slaughter houses are established, under a provision that "no person shall slaughter any cattle or dress any carcass for sale as food for man, in any place within the limits other than a slaughter house." It was held that the enactment only applied to the slaughtering of beasts intended by the person slaughtering the same for sale for human food. (*Elias* v. *Nightingale*, 8 E. & B. 698; see further, *Anthony* v. *Brecon Markets Co.*, L. R. 2 Ex. 167; reversed, L. R. 7 Ex. 399.) An indictment will lie for a public nuisance, but an indictment will not lie for a private nuisance. (*The King* v. *Atkins*, 3 Burr. 1706.) That which is not of public concern is a mere civil injury. (*The King* v. *Storr*, 3 Burr. 1698; *The King* v. *Johnson* 1 Wils. 325.) The non-repair of a private road, even by a public body, is not indictable. (*The King* v. *Richards*, 8 T. R. 634; *The King* v. *Trafford*, 1 B. & Ad. 874.) The writ *quod permittat* lay at common law to prostrate a public nuisance (*Palmer* v. *Poultney*, 2 Salk. 458); and after judgment on an indictment for a nuisance, a writ of prostration may still be issued. (*The King* v. *Newdigate*, Comb. 10; *Houghton's Case*, Sir T. Boyd, 215; Vin. Abr. "Nuisance," A. *Ib.* "Chemin;" Fitz. Nat. Brev. 124; *The Queen* v. *Haynes*, 7 Ir. L. R. 2.) An action on the case will lie for the continuance of a nuisance after recovery for its erection. (*Rosewell* v. *Prior*, 1 Salk. 460.) Though an indictment for a nuisance is in form a criminal, it is in substance a civil proceeding, remedial in its object. (*The King* v. *Sadler*, 4 C. & P. 218; *Holmes* v. *Wilson*, 10 A. & E. 503; *In re Douglass*, 3 Q. B. 825; *Thompson* v. *Gibson*, 7 M. & W. 456; *The Queen* v. *Chorley*,

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(16.) For preventing or regulating the construction of privy vaults; (*v*) 29-30 V. c. 51, s. 296, sub. 21. Privy vaults.

(17.) For preventing or regulating the erection or continuance of slaughter houses, gas works, tanneries, distilleries or other manufactories or trades which may prove to be nuisances; (*w*) 29-30 V. c. 51, s. 296, sub. 23. Slaughter houses, &c.

(18.) For preventing the ringing of bells, blowing of Preventing noises.

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12 Q. B. 515; *The King* v. *Russell*, 3 E. & B. 942; *The Queen* v. *Loughton*, 3 Smith, 575; *The Queen* v. *Lincombe*, 2 Chit. 214.) Upon an indictment for a continuing nuisance—such as a wall across a highway—the proper judgment is that it be abated (*The King* v. *Stead*, 8 T. R. 142; *The King* v. *Yorkshire*, 7 T. R. 467); and when the Court is satisfied before judgment that a nuisance has been abated, the judgment need not be pronounced. (*The King* v. *Incledon*, 13 East. 164; *The Queen* v. *Paget*, 3 F. & F. 29.) The practice followed is to respite judgment until it be seen whether or not the nuisance is abated, and if not to inflict a heavy fine to compel the abatement. (*Ib.*) There may be an indictment for the continuance of a nuisance (*The Queen* v. *Maybury*, 4 F. & F. 90), and in such a case the former judgment is conclusive that the *locus in quo* was a highway, and that the erection upon it was a nuisance. (*Ib.*) This being so, upon proof of the continuance of the nuisance, the jury must find the defendant guilty. (*Ib.*)

(*v*) See sub. 49 to this section, and notes thereto.

(*w*) There is no doubt that certain manufactories or trades may be public nuisances. The difficulty is to define them. Much depends upon location, use, and other surrounding circumstances. (*Aldrich* v. *Howard*, 7 Rh. Is. 87; *Burditt* v. *Swenson*, 17 Tex. 489; *Dargan* v. *Waddell*, 9 Ire. Law, 244; *Kirkman* v. *Handy*, 11 Humph. 406; *Coker* v. *Birge*, 10 Geo. 336; *Tipping* v. *St. Helens Smelting Co.*, 4 B. & S. 608.) Slaughter houses (see *The King* v. *Watts*, 2 C. & P. 486; *Elias* v. *Nightingale*, 8 E. & B. 698; *Anthony* v. *Brecon Markets Co.*, L. R. 2 Ex. 167; s. c. L. R. 7 Ex. 399; *Dubois* v. *Budlong*, 10 Bosw. (N.Y.) 700); gas works (*Cleveland* v. *Gas Light Co.*, 20 N. J. Eq. 201); tanneries and distilleries are here instanced. To these may be added, in populous places, a pig-sty (*Commissioners* v. *Van Sickle*, Bright, Pa. Rep. 69); brick-making (*Wanstead* v. *Hill*, 13 C. B. N. S. 479; *Bamford* v. *Turnley*, 3 B. & S. 62); a planing mill (*Rhodes* v. *Dunbar*, 57 Pa. St. 274); powder house (*Cheatham* v. *Shearn*, 1 Swan. (Tenn.) 213; *Durnesnil* v. *Dupont*, 18 B. Mon. 800); a dangerous building (*Nolin* v. *Major*, 4 Yerg. (Tenn.) 163; *Harvey* v. *Dewoody*, 18 Ark. 252); spirit of sulphur or oil of vitriol works (*The King* v. *White*, 1 Burr. 333.) The power conferred by this section is to pass By-laws for "preventing" or "regulating" the erection or continuance of such nuisances. A By-law declaring that "no person shall keep a slaughter house within the City without the special resolution of the Council," was held to be void, because it permitted favouritism by the Council, and might be used in restraint of trade or used to grant a monopoly. (*In re Nash and McCracken*, 33 U. C. Q. B. 181.)



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horns, shouting and other unusual noises in streets and public places; (*x*) 29-30 V. c. 51, s. 296, sub. 24.

Firing of guns, &c.

(19.) For preventing or regulating the firing of guns or other fire-arms, and the firing or setting off of fire-balls, squibs, crackers or fireworks, and for preventing charivaries and other like disturbances of the peace; (*y*) 29-30 V. c. 51, s. 296, sub. 25.

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(*x*) Ringing of bells, blowing of horns, and other *unusual* noices, are here treated as nuisances. They may or may not be nuisances, according to circumstances. It is in the power, however, of the Corporation at any time to treat all such, when in streets and public places, as nuisances, and prevent them. It is difficult to describe, though easy to imagine, such "an unusual noise" as would be a nuisance. Some examples may, however, be given. The noise of a tinsmith in carrying on his trade, if in a neighbourhood where there is a number of offices, and of sufficient magnitude to prevent the occupants from following their lawful business, will, if it affect a considerable number of inhabitants, be deemed a public nuisance. (*The King* v. *Lloyd*, 4 Esp. 200.) Knocking at a door or ringing a door-bell at night, where the noise is so great as to disturb not only the owner of the house and his family, but his neighbours, may be "wilful and wanton" within the meaning of Eng. Stat. 10 & 11 Vic. cap. 89, s. 28, although the man who was guilty of it had been instructed to deliver papers at the house. (*Clarke* v. *Hoggins*, 11 C. B. N. S. 544.) A circus, the performances in which were to be carried on for eight weeks near the plaintiff's house, and the performances, which took place every evening, lasted from about half-past seven till half-past ten o'clock. The noise of the music and shouting in the circus could be distinctly heard all over the house, and was so loud that it could be heard above the conversation in the dining room, though the windows and shutters were closed. This was held to be a nuisance. (*Inchbald* v. *Robinson*, L. R. 4 Ch. App. 388.) If a man builds a rolling mill close to inhabited cottages, so that the vibration produced by the hammers cracks the walls of the cottages, and the noise of the mill causes them to become and remain uninhabited, the rolling mill will be a nuisance. (*Scott* v. *Firth*, 4 F. & F. 349; s. c. 10 L. T. N. S. 240.)

(*y*) A shooting ground near a public highway, where persons come to shoot with rifles at pigeons, targets, &c., may be a nuisance. (*The King* v. *Moore*, 3 B. & Ad. 184.) So, by means of powder, working stone quarries near to public streets and dwelling houses. (*The Queen* v. *Mutters*, 10 Cox, 6.) Fog signals were held to be within the term fire-works, as used in Eng. Stat. 23 & 24 Vic. cap. 139. A schoolmaster who permitted an infant pupil under his care to make use of fire-works, was held responsible in an action for the mischief which ensued. (*The King* v. *Ford*, 1 Stark. 421.) A. made fire-works and kept them for sale in a house situate on a public street. In his absence, by negligence or accident, a fire took place among the materials of the fire-works, which set light to a rocket and caused it to fly across the street and set fire to a house, in which was a person who was burned to death. *Held*, that the keeping the fire-works

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*Vacant Lots.*

(20.) For causing vacant lots to be properly enclosed; (*z*) 29-30 V. c. 51, s. 296, sub. 22. Vacant lots.

*Cattle off Sidewalks.*

(21.) For preventing the leading, riding or driving of horses or cattle upon sidewalks or other places not proper therefor; (*a*) *Vide* 29-30 V. c. 51, s. 296, sub. 26. Driving, &c., upon sidewalks.

*Importuning Travellers.*

(22.) For preventing persons in streets or public places from importuning others to travel in or employ any vessel or vehicle, or go to any tavern or boarding house, (*b*) or for regulating persons so employed; 29-30 V. c. 51, s. 296, sub. 27. Importuning travellers.

*Public Health.*

(23.) For providing for the health of the Municipality, (*c*) and against the spreading of contagious or infectious diseases; 29-30 V. c. 51, s. 296, sub. 28. Public health.

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was too remotely the cause of the death to render A. amenable in a charge of manslaugher. (*The Queen* v. *Bennett*, 4 Jur. N. S. 1088; s. c. Bell, C. C. 1.) A defendant sued for fire-works cannot, under a plea of never indebted, object that the sale of fire-works is illegal. (*Penwick* v. *Laycock*, 1 Q. B. 414.)

(*z*) "Vacant lots of *land*" are here intended, though not so expressed, and which in Cities and Towns are often made receptacles of nuisances. Hence the power to direct them "to be properly enclosed."

(*a*) A sidewalk is that portion of a highway which pedestrians have a lawful right to use. (*Bacon* v. *Boston*, 3 Cush. 174; *Bloomington* v. *Bay*, 42 Ill. 503; *Wallace* v. *New York*, 2 Hill, 440; *Hall* v. *Manchester*, 40 N. H. 110; *Raymond* v. *Lowell*, 6 Cush. 524; *Hart* v. *Brooklyn*, 36 Barb. 226.) The right of the public so to use sidewalks makes it the duty of the Municipal authorities to see that horses or cattle should not be led, ridden or driven on the sidewalks. (See *Commonwealth* v. *Curtis*, 9 Allen, 266.) Indeed, an awning over a sidewalk may be removed by the authority of the Corporation. (*Pedrick* v. *Bailey*, 12 Gray, 161; see generally, *Noyes* v. *Ward*, 19 Con. 250-270; *Clark* v. *McCarthy*, 1 Cal. 453.)

(*b*) Persons, commonly called runners, are often employed to solicit people to travel in or employ a particular vessel or vehicle, or to go to a particular hotel, tavern or boarding-house. They are not at all times the best behaved of men; and in their eagerness to serve their masters, if not restrained, become a nuisance to the travelling public. Power is here conferred either to prevent or regulate them importuning travellers "in streets or public places." (See note *z* to sub. 39 of sec. 379.)

(*c*) A person sick, even with a contagious disease, at his own house or at a hotel, is not a nuisance. (*Boone* v. *Utica*, 2 Barb. 104; see also sec. 382, and notes thereto.)

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*Interments.*

Interments.

(24.) For regulating the interment of the dead, (*d*) and for preventing the same taking place within the Municipality; 29-30 V. c. 51, s. 296, sub. 29.

Bills of mortality.

(25.) For directing the keeping and returning of bills of mortality, (*e*) and for imposing penaltes on persons guilty of default; 29-30 V. c. 51, s. 296, sub. 30.

*Gunpowder.*

Gunpowder, care of.

(26.) For regulating the keeping and transporting of gunpowder and other combustible or dangerous materials; (*f*)

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(*d*) See sub. 7 to sec. 379, and notes thereto.

(*e*) "Bills of mortality" is the common phrase to denote statistics of the dead. The duty to keep such statistics and to make returns therefrom may, it is presumed, be imposed on any one in charge of a public cemetery of any kind within the Municipality. The duty may, under this subsection, be enforced by the ordinary mode of fine or penalty. The fine or penalty must be reasonable. (See sub. 13 to sec. 372.)

(*f*) The powers here conferred are—

1. For regulating the keeping and transporting of gunpowder and other combustible or dangerous materials;
2. For regulating and providing for the support, by fees, of magazines for storing gunpowder belonging to private parties;
3. For compelling persons to store therein;
4. For acquiring land, as well within as without the Municipality, for the purpose of erecting powder magazines; and
5. For selling and conveying such land when no longer required. (See note c to sub. 1 of sec. 372.)

The manufacturing and keeping large quantities of gunpowder in towns or closely inhabited places is an indictable offence at common law. (*The King* v. *Williams*, 1 Russ. 321; *The King* v. *Taylor*, 2 Str. 1167; see also *Crowder* v. *Tinkler*, 19 Ves. 617.) In England it is now regulated by statute 23 & 24 Vic. cap. 139, amended by 24 & 25 Vic. cap. 130, and 25 & 26 Vic. cap. 98. So the keeping and storing of large quantities of wood, naphtha and rectified spirits in a warehouse in the city of London. (*The Queen* v. *Lister*, Dears. & B. 209; s. c. 26 L. J. Mag. Cas. 196.) The English statute 25 & 26 Vic. cap. 66, is extended to nitro-glycerine and all other substances for the time being declared by an Order in Council to be specially dangerous. In the United States it has been held that a City Corporation may lawfully pass a By-law requiring all gunpowder brought into the city to be conveyed to the public magazine of the city, except when to be retailed, and then to be kept in limited quantities and in secure canisters. (*Williams* v. *Augusta*, 4 Geo. 509.) Two Justices in England, under 12 Geo. III. cap. 61, ss. 11, 18, were empowered to adjudge a forfeiture of gunpowder conveyed in the city contrary to its provisions. Where several packages of gunpowder, amounting in the whole to 300 lbs. weight, were sent by different persons to a warehouse in London belonging to a

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for regulating and providing for the support, by fees, of magazines for storing gunpowder belonging to private parties; for compelling persons to store therein; for acquiring land as well within as without the Municipality, for the purpose of erecting powder magazines, and for selling and conveying such land when no longer required therefor; 29-30 V. c. 51, s. 296, sub. 32.

*Preventing Fires.*

(27.) For appointing Fire Wardens, (*g*) Fire Engineers and Firemen, and promoting, establishing and regulating Fire Companies, Hook and Ladder Companies and Property-saving Companies; 29-30 V. c. 51, s. 296, sub. 33. Fire companies, &c.

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carrier and licensed carman, as a temporary halting place in their transit, it was held that there was no unlawful having or keeping of gunpowder within the meaning of the statute. (*Bigge* v. *Mitchell*, 2 B. & S. 523.) A conviction, under the statute, awarding a forfeiture of gunpowder, must show that the person to whom it is adjudged is the person who seized. (*The King* v. *Smith*, 5 M. & S. 133.) A person who manufactures and keeps fog-signals—being tin cases filled with gunpowder and fitted with nipples and percussion caps—upon premises within the distances specified by English statute 23 & 24 Vic. cap. 139, s. 6, and for which premises he had not a license under sec. 11, was held liable to a penalty. (*Bliss* v. *Lilley*, 3 B. & S. 128; see generally, *Webley* v. *Woolley*, L. R. 7 Q. B. 61; *Eliott* v. *Majendie*, *Ib.* 429; see further, *Brown* v. *Maryland*, 12 Wheat. 419, 443.)

(*g*) The prevention of damage to buildings by fire is an object which affects the interest of all the inhabitants, and relieves them from a common burden and a common danger, and is therefore within the scope of Municipal authority. (*Allen* v. *Taunton*, 19 Pick. 485; *Torrey* v. *Millbury*, 21 Pick. 64; *Hardy* v. *Waltham*, 3 Metc. 163; *Huneman* v. *Fire District*, 37 Vt. 40; *Wadleigh* v. *Gilman*, 12 Me. 403; *Vanderbilt* v. *Adams*, 7 Cow. 349-352.) Where such is the case, the Municipal Council is authorized to appoint and pay Fire Wardens, Fire Engineers, Firemen, Fire Companies, Hook and Ladder Companies and Property-saving Companies. (*Van Sicklen* v. *Burlington*, 27 Vt. (1 Wms.) 70; *Robinson* v. *St. Louis*, 28 Mo. 488; *Miller* v. *Savannah Fire Co.*, 26 Geo. 678.) The necessary powers are here in express terms conferred on Municipal Corporations. These powers are in their nature legislative and governmental; the extent and manner of their exercise, within the sphere prescribed by the statute, are necessarily to be determined by the judgment and discretion of the proper Municipal authorities; and for any defect in the execution of such powers the Corporation is not to be held liable to individuals. The power of the Municipal Council over the subject is that of a delegated *quasi* sovereignty, which excludes responsibility to individuals for the neglect or nonfeasance of an officer or agent charged with the performance of duties. (*Wheeler* v. *Cincinnati*, 19 Ohio St. 19; s. c. 2 Am. Rep. 368.) In the absence of express statute, Corporations are not liable to actions occasioned by reason of negligence in using or keeping in repair engines owned

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Medals and rewards to persons distinguishing themselves at fires. Aid to widows.

(28.) For providing medals or rewards for persons who distinguish themselves at fires; (*h*) and for granting pecuniary aid or otherwise assisting the widows and orphans of persons who are killed by accident at such fires; 29-30 V. c. 51, s. 296, sub. 34.

Fire in stables, &c.

(29.) For preventing or regulating the use of fire or lights in stables, cabinet-makers' shops, carpenters' shops, and combustible places; (*i*) 29-30 V. c. 51, s. 296, sub. 35.

Dangerous manufactories.

(30.) For preventing or regulating the carrying on of manufactories or trades dangerous in causing or promoting fire; (*j*) 29-30 V. c. 51, s. 296, sub. 36.

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by them. (*Hafford* v. *New Bedford*, 16 Gray, 297; *Eastman* v. *Meredith*, 36 N. H. 284; *Bigelow* v. *Randolph*, 14 Gray, 541; *Oliver* v. *Worcester*, 102 Mass. 489-499; *Fisher* v. *Boston*, 104 Mass. 87; 6 Am. Rep. 196.) The Fire Wardens, Fire Engineers, and other similar officers, are not the servants and agents of the City so much as they are public officers, for whose acts, in their official capacity, the City is not responsible, except when expressly so provided by statute. (*Taylor* v. *Plymouth*, 8 Metc. 462.) It is different where the Corporation is charged by law with the performance of a duty purely ministerial in its character (*Scott* v. *Manchester*, 1 H. & N. 59; *Brinkmeyer* v. *Evansville*, 29 Ind. 187; *Western College of Medicine* v. *Cleveland*, 12 Ohio St. 375; see further, note *d* to sub. 47 of this section); or an act is done by the City for its own corporate advantage or immediate emolument (*Oliver* v. *Worcester*, 102 Mass. 489); or where the neglect is of a duty cast upon a gas company or a water company, or other trading company of a *quasi* public character, to the prejudice or loss of one of the public. (*Couch* v. *Steel*, 3 E. & B. 402; *Atkinson* v. *Newcastle and Gateshead Water Works Co.*, L. R. 6 Ex. 404.) A water works company, whose duty it was to keep their pipes, to which fire-plugs are fixed, constantly charged with water at a certain pressure, are liable for the loss of a citizen's house by the neglect of that duty. (*Ib.*)

(*h*) The prevention of the spread of fire is often attended with great personal risk and consequent loss of life. No ordinary remuneration is therefore deemed a sufficient incentive at all times for the efficient discharge of the dangerous duty. The providing of medals or other rewards for those who distinguish themselves at fires, and the granting of pecuniary aid to the widows and orphans of those who lose their lives while in the discharge of such a duty, and owing thereto, is a laudable purpose, for which full power is here given. (See *The Queen* v. *Combe*, 13 Q. B. 179; *Ex parte Loader*, 13 Jur. 192; *The Queen* v. *Combe*, 3 New Sess. Cases, 394.)

(*i*) Prevention is better than cure. On this principle Municipal Councils are authorized to prevent or regulate the use of fire or lights in stables, cabinet-makers' shops, carpenters' shops, "and combustible places." (See note *r* to sec. 370.)

(*j*) Security for life and property are the two great objects of Municipal control. Manufactories or trades injurious to health may be restrained. (Sec. 384, sub. 15-17.) Similar power is here con-

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(31.) For preventing, and for removing (*k*) or regulating the construction of any chimney, flue, fire-place, stove, oven, boiler, or other apparatus or thing which may be dangerous in causing or promoting fire; 29-30 V. c. 51, s. 296, sub. 37. Chimneys, stoves, &c.

(32.) For regulating the construction of chimneys as to dimensions and otherwise, and for enforcing the proper cleaning of the same; (*l*) 29-30 V. c. 51, s. 296, sub. 38. Size and cleaning of chimneys, &c.

(33.) For regulating the mode of removal and safe keeping of ashes; (*m*) 29-30 V. c. 51, s. 296, sub. 39. Ashes.

(34.) For regulating and enforcing the erection of party-walls; (*n*) 29-30 V. c. 51, s. 296, sub. 40. Party-walls.

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ferred as to "manufactories or trades dangerous in causing or promoting fire." These may be either prevented or regulated. Indeed, there is power, in case of emergency, to destroy houses to prevent the spread of fire. (See sub. 39 of this section.) These laws, though to some extent infringing man's natural rights, are yet for the public good. In *Goddard* v. *Jacksonville*, 15 Ill. 589, Scales, J., said, "We have a natural right to labour or to rest; yet we are forbidden to become idlers, vagrants or vagabonds. We have a natural right to kill and destroy our animals; yet cruelty to them is forbidden. We have a natural right to give away our property or destroy it; yet we may not gamble it off. So in relation to storing gunpowder in Cities, exhibiting fireworks, &c. The acts are innocent in themselves; but their dangerous tendency to the community in the particular place requires the right of the owner to become subordinate to the public good."

(*k*) The importance of having chimneys, flues, fire-places, stoves, ovens, &c., safely constructed, in thickly-populated places, so as to prevent fire and its spread, cannot be over-estimated. Hence the Legislature, in this subsection, not only provides, as in previous subsections, for the "preventing" or "regulating," but for "*removing*." (See note *m* to sub. 10 of sec. 379.)

(*l*) It is important that responsible persons should be appointed for the cleaning of chimneys, and that such persons should have all proper appliances. Hitherto, in Cities and Towns, men have been employed to perform the duty who were unfit for anything else, and not fit for it. Their ignorance and incapacity is only equalled by their insolence and rapacity. Though Municipal Corporations are apparently not in law responsible for the misconduct of such persons (note *y* to sub. 27 of this section), greater care should be exercised in the selection and appointment of them.

(*m*) Many fires are said to be "accidental" which are the result of neglect to keep ashes in fire-proof utensils; and yet regulations for the safe keeping of ashes are seldom made, and, when made, rarely enforced. Ashes may, under certain English statutes, be removed as rubbish. (See *Filbey* v. *Combe*, 2 M. & W. 677; *Low* v. *Dodd*, 1 Ex. 845; *Lyndon* v. *Standbridge*, 2 H. & N. 45.)

(*n*) Regulations as to party-walls must be strictly followed. If a person, under colour of such regulations, do injury to his neighbour, he is liable to be sued. (*Pratt* v. *Hillman*, 4 B. & C. 269: see also

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Scuttles, ladders, &c., to houses.

(35.) For compelling the owners and occupants of houses to have scuttles in the roof thereof, with approaches; (*o*) or stairs or ladders leading to the roof; *vide* 29-30 V. c. 51, s. 296, sub. 41.

Guarding buildings against fire.

(36.) For causing buildings and yards to be put in other respects into a safe condition to guard against fire or other dangerous risk or accident; (*p*) 29-30 V. c. 51, s. 296, sub. 42.

Fire buckets

(37.) For requiring the inhabitants to provide so many fire buckets in such manner and time as may be prescribed; (*q*)

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*The Queen* v. *Ponsford*, 1 D. & L. 116.) No man has a right to presume that his neighbour will hereafter build a house adjoining to his, and erect half of his outside wall on his neighbour's ground in consequence of such presumption. (*Barlow* v. *Norman*, 2 W. Bl. 959.) An external wall cannot be said to be a party-wall. (*Sims* v. *Estate Company*, 14 L. T. N. S. 55.) A party-wall is a thing which belongs to two persons as part owners, or divides two buildings one from another. (*Weston* v. *Arnold*, L. R. 8 Ch. Ap. 1084.) The English statute 14 Geo. III. cap. 78, was held not to make party-walls common property. (*Matts* v. *Hawkins*, 5 Taunt. 20.) If one proprietor added to the height of such a party-wall, and the other pulled down the addition, the first might maintain trespass for pulling down so much of it as stood on the half of the wall which was erected on his own soil. (*Ib.*) The property in a wall, though erected at joint expense, follows the property of the land whereon it stands. (*Ib.*) Power to pass ordinances "to authorize the erection of party-walls, &c., and to regulate them," has been held to include the power to authorize their erection upon the application of either owner, and without the consent of the other. (*Hunt* v. *Ambruster*, 17 N. J. Eq. 208.) It has been held that the owner who pulls down a party-wall, under the authority of the Metropolitan Building Act, 18 & 19 Vic. cap. 122, is not bound to protect, by boarding or otherwise, the rooms of the adjacent owner left exposed to the weather. (*Thompson* v. *Hill*, L. R. 5 C. P. 564.) As to the meaning of the word "owner" in such an Act, see *Wheeler* v. *Gray*, 4 C. B. N. S. 584; s. c. 6 C. B. N. S. 606; and *Tubb* v. *Good*, L. R. 5 Q. B. 443.

(*o*) The prevention of fire is the first thing of importance; access to it, in the event of fire, is next in importance. The previous subsections are of the first class; this, of the second. It enables Municipal Councils to pass regulations *compelling* owners and occupants of houses to have scuttles in the roof, stairs, ladders, &c.

(*p*) The previous subsections deal with details. Many things under their operation may be required to prevent fire. In many respects special provision is made for guards against fire. But in order that the power may be as extensive as necessary, a general power is here conferred for causing buildings and yards to be put "in other respects" into a safe condition against fire, and not only against fire, but "*other* dangerous risk or accident." (See note *r* to sec. 370.)

(*q*) The powers here conferred are—

1. For requiring the inhabitants to provide fire buckets;

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and for regulating the examination of them, and the use of them at fires; 29-30 V. c. 51, s. 296, sub. 43.

(38.) For authorizing appointed officers to enter at all reasonable times upon any property, subject to the regulations of the Council, in order to ascertain whether such regulations are obeyed, or to enforce or carry into effect the same; (*r*) 29-30 V. c. 51, s. 296, sub. 44. Inspection of premises.

(39.) For making regulations for suppressing fires, and for pulling down or demolishing adjacent houses or other erections, (*s*) when necessary, to prevent the spreading of fire; 29-30 V. c. 51, s. 296, sub. 45. Preventing spreading of fire.

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2. For regulating the examination of fire buckets;

3. And the use of them at fires.

No explanation is given as to what is "a fire bucket." Bucket is the term applied to a vessel commonly used to draw water out of a well.

(*r*) This is an important subsection. It does not follow that because people are required to do certain things, even for their own safety, that they will do as required. Negligent people have existed at all times, and will continue to exist as long as time itself. Supervision is necessary. The power, therefore, conferred by this subsection is for authorizing appointed officers to enter, at all *reasonable times*, upon *any* property, subject to the regulations of the Council, "in order to ascertain whether such regulations are obeyed." But the more important part follows—that which enables the officer "to enforce or *carry into effect the same.*" The enforcement might be by prosecution and fine; but the words "carry into effect the same" appear to indicate a specific performance of the duty by the officer. If the regulation be that certain things shall not be, the officer may be held to have power to remove them; but if it be that certain things shall be, he is not likely to supply them without some provision for compensating him. No property should, it is apprehended, be demolished or destroyed without an opportunity of some kind to the party concerned of being heard. (See *Cooper* v. *The Board of Works, &c.*, 14 C. B. N. S. 180; see also *The Queen* v. *Sparrow*, 16 C. B. N. S. 209; *Bauman* v. *Vestry of St. Pancras*, L. R. 2 Q. B. 528; *Smith* v. *Simpson*, L. R. 6 C. P. 87; see further, note *m* to sub. 10 of sec. 379.)

(*s*) Rights of private property may be made subordinate to public necessity. The right to destroy buildings in order to prevent the spread of a conflagration is one that has been exercised from the earliest times. (See note *m* to sub. 10 of sec. 379.) In such a case, in the absence of an express statutory liability, the owner of property so destroyed is without remedy. (*Dewey* v. *White*, M. & M. 56; *White* v. *Charleston*, 2 Hill (S.C.), 571; *People* v. *Winnehammer*, 12 How. P. R. Rep. Court App. 260; *Russell* v. *New York*, 2 Denio. 461–474; *Taylor* v. *Plymouth*, 8 Metc. 462; *Hafford* v. *New Bedford*, 16 Gray, 297; *Macdonald* v. *Redwing*, 13 Min. 38; *Surocco* v. *Geary*, 3 Cal. 69; *Western College* v. *Cleveland*, 12 Ohio St. 375; *Coffin* v. *Nantucket*, 5 Cush. 269; *Ruggles* v. *Nantucket*, 11 Cush. 433; see further, note *g*

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Enforcing assistance at fires.

(40.) For regulating the conduct and enforcing the assistance of the inhabitants present at fires, and for the preservation of property at fires; (*t*) 29-30 V. c. 51, s. 296, sub. 46.

*Removal of Snow, Ice, Dirt and Obstructions.*

Removal of snow, &c.

(41.) For compelling persons to remove all snow and ice from the roofs of the premises owned or occupied by them, and to remove and clear away all snow, ice and dirt, and other obstructions, from the sidewalks, streets and alleys

Cleansing of sidewalks, streets, &c.

adjoining such premises; and also to provide for the cleaning of sidewalks and streets adjoining vacant property, the property of non-residents, and all other persons (*u*) who, for

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to sub. 27 of this section.) If there be a remedy given by the statute or at common law, existing because of excess, the fact that the owner was warned does not affect his right of recovery. (*New York* v. *Pentz*, 24 Wend. 668; see also *Pentz* v. *Ætna Insurance Co.*, 9 Paige, 568; *City Fire Insurance Co.* v. *Corlies*, 21 Wend. 367.) The opinions of bystanders, as to whether in their judgment the building, if allowed to stand, would have taken fire, held not to be admissible evidence. (*New York* v. *Pentz*, 24 Wend. 668.) As one whose property has been destroyed, by the order of the public authorities, for the public benefit, has a strong natural equity for compensation, a statute making the Corporation liable should be liberally expounded, though not strained to cover cases not fairly embraced within them. (*Per* Nelson, C. J., in *New York* v. *Lord*, 17 Wend. 285, affirmed 18 Wend. 126; see also *New York* v. *Pentz*, 24 Wend. 668; *Stone* v. *Mayor, &c.*, 25 Wend. 157.) Such a statute ought not to be construed to apply to a building pulled down after it is so far burnt that it is impossible to save it. (*Taylor* v. *Plymouth*, 8 Metc. 462.) If the statute give a right to compensation and prescribe no specific remedy, an action will lie. (*Russell* v. *New York*, 2 Denio. 461.) This subsection, providing for pulling down or demolishing "adjacent houses *or other erections*," apparently does not extend to personal property. (See *Stone* v. *New York*, 20 Wend. 139; s. c. 25 Wend. 157; *New York* v. *Lord*, 17 Wend. 285; s. c., 18 Wend. 126; also note *r* to sec. 370.)

(*t*) The prevention of the spread of fires and the preservation of property at fires are two very proper subjects for Municipal control. Power to enforce assistance of those present at fires comes under the first head, and the latter part of the subsection under the second head. The property intended, it is believed, is personal property; in cities as much of it is lost by theft as by fire, and often as much by recklessness as by theft and fire combined.

(*u*) The powers here conferred are for *compelling* persons—

1. To remove all snow and ice from the *roofs* of the premises owned or occupied by them;

2. To remove and clear away all snow, ice and dirt, and other obstructions from the *sidewalks*, streets and alleys adjoining their premises;

And to provide—

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twenty-four hours, shall neglect to clean the same, and to remove and clear away all snow and ice, and other obstructions, from such sidewalks and streets, at the expense of the owner or occupant in case of his default, (*v*) and in case of

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3. For the cleaning of sidewalks and streets adjoining vacant property, the property of non-residents and all other persons.

It has been held in this Province that, in the absence of any public regulation, people are not compelled to keep the roofs of their houses clear of snow, or to detain the snow on the roofs, so that it cannot slide from thence into the street. (*Lazarus* v. *Toronto*, 19 U. C. Q. B. 1.) The contrary has been held in the United States. (*Shipley* v. *Fifty Associates*, 101 Mass. 251; s. c. 3 Am. Rep. 346.) In the United States it has been also held that persons suffering snow and ice to accumulate upon an awning placed by them over a sidewalk, if the awning be insufficient to hold the snow and ice, and it in consequence give way and injure a passer-by, are liable to damages. *Milford* v. *Holbrook*, 9 Allen, 17). It would seem that, *prima facie*, the occupants of the building, and not the owners, out of occupation, are the proper persons to be sued in such an action. (*Kirby* v. *Boylston Market Association*, 14 Gray, 249.) But if the roof be under the control of the landlord, and not of the tenant, the former would be liable. (*Shipley* v. *Fifty Associates*, 101 Mass. 251; s. c. 3 Am. Rep. 346.) It would also seem that the accumulation of snow and ice on a sidewalk, in the absence, at all events, of a public regulation on the subject, would not render the adjoining proprietor liable to an action for an accident arising therefrom. (See *Shepherd* v. *The Midland Railway Co.*, 25 L. T. N. S. 879; *Sharp* v. *Powell*, L. R. 7 C. P. 253.) The City of Boston, under the power "to make needful and salutary By-laws," passed a By-law requiring the tenant or occupant, or, in case there shall be no tenant, the owners of buildings bordering on certain streets, to clear snow from the sidewalks adjoining their respective buildings, &c. It was held valid. (*Goddart, Petitioner, &c.*, 16 Pick. 504; *Union Railroad Co.* v. *Cambridge*, 11 Allen, 287; *Kirby* v. *Boylston Market Association*, 14 Gray, 252.) Such a By-law is regarded by the Court "as a Police regulation, requiring a duty to be performed, highly salutary and advantageous to the citizens of a populous and closely built City, imposed upon them because they are so situated as that they can most promptly and conveniently perform it; and it is laid not upon a few, but upon a numerous class, and equally upon all who are within the description composing the class, and who commonly derive a peculiar benefit from the duty required." (*Goddart, Petitioner, &c.*, 16 Pick, 509, *per* Shaw, C. J.) Even when such a By-law is passed and its provisions neglected, it would seem that no action will lie by a person aggrieved against the person whose duty it is, under the By-law, to remove the snow and ice. (*Kirby* v. *Boylston Market Association*, 14 Gray, 269; *Bateman* v. *Marriott*, 9 Md. 160.) The remedy, at all events, so far as the sidewalk is concerned, if there be one, would appear to be against the Municipal Corporation, for alleged non-repair, and not against the individual proprietor. (See following note.)

(*v*) It was held, in the Court of Common Pleas, that an action would not lie against the City of Toronto for a slight accumulation of ice on one of the sidewalks of the principal street of the City,

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non-payment, to charge such expenses as a special assessment against such premises, to be recovered in like manner as other Municipal rates; (*w*) 29-30 V. c. 51, s. 296, sub. 47; 31 V. c. 30, s. 34.

Preventing obstruction and fouling of streets, &c.

(42.) For regulating or preventing the encumbering, injuring or fouling, by animals, vehicles, vessels or other means, (*x*) of any road, street, square, alley, lane, bridge or other communication; 29-30 V. c. 51, s. 340, sub. 3.

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resulting in an injury to the plaintiff, although the adjoining proprietor omitted to remove it within the time provided by By-law, and although the City authorities had neglected to appoint any officer whose duty it was to enforce the provisions of the By-law requiring the removal of snow and ice. (*Ringland* v. *Toronto*, 23 U. C. C. P. 93.) Galt, J., nonsuited the plaintiff at the trial, and Gywnne, J. (the Chief Justice being absent), delivered the judgment of the Court, which appeared to indicate that no action would lie against a Municipal Corporation for alleged non-repair, unless the alleged non-repair be such as to amount to an indictable nuisance. (See further, sec. 409, and notes thereto.)

(*w*) This charging must, it is apprehended, be done by the City Clerk when making up the Collector's Roll. The intention is to make the cost of the removal of snow and ice from sidewalks, &c., a charge against the premises in front of which snow or ice, being negligently allowed to accumulate, is removed by the City authorities.

(*x*) The primary object of the street is for the free passage of the public, and anything which, *without necessity*, impedes that free passage is a nuisance. (*The King* v. *Russell*, 6 East. 430.) The right of any one man lawfully to use the street is subject to the right of any other man to make a corresponding use. Thus the carriage and delivery of goods, &c., is the legitimate use of a street, and may result in the temporary obstruction of public transit. "No man has a right to throw wood or stones into the street at pleasure. But, inasmuch as fuel is necessary, a man may throw wood into the street for the purpose of having it carried into his house, and it may lie there a reasonable time. So, because building is necessary, stones, bricks, lime, sand and other materials may be placed on the street, provided it be done in the most convenient manner." (*Commonwealth* v. *Passmore*, 1 Serg. & R. 217; approved in *People* v. *Cunningham*, 1 Denio. (N. Y.) 524; *Clark* v. *Fry*, 8 Ohio, 358-374; *St. John* v. *New York*, 3 Bosw. (N. Y.) 483; *Wood* v. *Mears*, 12 Ind. 515; *O'Linda* v. *Lothrop*, 21 Pick. 292.) "A cart or waggon may be unloaded at a gateway, but this must be done with promptness. So as to the repairing of a house: the public must submit to the inconvenience occasioned necessarily in repairing the house; but if this inconvenience is prolonged for an unreasonable time, the public have a right to complain." *Per* Lord Ellenborough, in *The King* v. *Jones*, 3 Camp, 231; see also *Thorpe* v. *Brumfitt*, L. R. 8 Ch. Ap. 650.) A man has no right to eke out the inconvenience of his own premises by taking the public highway into his timber yard (*Ib.*) or stone yard.) (*Cushing* v. *Adams*, 18 Pick. 110; *Commonwealth* v. *King*, 13 Metc. 115. A

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(43.) For directing the removal of door-steps, porches, railings or other erections or obstructions projecting into or over any road or other public communication, (*y*) at the

Removal of door-steps, &c.

highway is not to be used as a stable-yard. (*The King* v. *Cross*, 3 Camp. 226; see also *Ridley* v. *Lamb*, 10 U. C. Q. B. 354.) But a stage coach may set down or take up passengers in the street, this being necessary for public convenience, but it must be done in a reasonable time. (*Ib.*) So long as the alleged obstruction is for the public convenience, there can be no reasonable ground of complaint. (*The King* v. *Russell*, 6 B. & C. 566; but see *The King* v. *Ward*, 4 A. & E. 384.) A railway company has no right to turn a highway into a yard for cars. (*Vars* v. *Grand Trunk Railway Co.*, 23 U. C. C. P. 114.) A man has no right to occupy one side of a street before his warehouses, in loading and unloading his waggons, for several hours at a time, both day and night, so that no carriage can pass on that side of the street, although there be room for two carriages to pass on the opposite side of the street. (*The King* v. *Russell*, 6 East. 427.) If a man does anything or permits anything on his premises in view of the public, and crowds of persons are thereby attracted by it, to the inconvenience of the public, that thing he cannot be allowed to do. Mr. Very, the well-known confectioner in Regent Street, London, had a daughter who attended to his shop, and who was considered so beautiful that a crowd of 300 or 400 persons used daily to assemble and stand at his shop windows for the purpose of looking at her. "The inconvenience was so great, both to Mr. Very and to his neighbours, that he was obliged to send his daughter out of town." (6 C. & P. 646, note.) A bookseller in Fleet Street took out the frames of his first-floor windows, and put into one of the windows an effigy of a bishop, under which was written "Spiritual broker;" in the second window a figure of a man in ordinary dress, and under him the words "Temporal broker." He afterwards added a third figure—that of the Devil, "the arm of the figure of the bishop being tucked into that of the Devil." These figures attracted such crowds to gaze at them that the bookseller was convicted of obstructing the highway. (*The King* v. *Carlile*, 6 C. & P. 636.) The acts of several persons in obstructing a highway may together constitute a nuisance which the Court of Chancery will restrain, though the damage occasioned by the acts of any one, if taken alone, would be inappreciable. (*Thorpe* v. *Brumfitt*, L. R. 8 Ch. App. 650.)

A City Council, having "exclusive power over streets," has the right by By-law to determine to what extent and under what circumstances they may be encumbered with building materials. (*Woods* v. *Mears*, 12 Ind. 515; but see *Ball* v. *Armstrong*, 10 Ind. 181.) Such a By-law will protect parties acting under it when such actions are not grounded on negligence of the defendants. (*Ib.*) The Corporation may, however, require a bond of indemnity before granting such a privilege. (*McCarthy* v. *Chicago*, 53 Ill. 38.) The conditions attached to the permission must be strictly observed. (*Lowell* v. *Simpson*, 10 Allen, 88; see further, note *n* to sub. 54 of this section.)

(*y*) Owners or occupiers of houses abutting on streets have a right to make a reasonable use of the street. Warehouses with doors and windows opening upon the street, and shutters projecting on the same when open, in the absence of a statute or By-law to the con-

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expense of the proprietor or occupant of the property connected with which such projections are found; 29-30 V. c. 51, s. 340, sub. 4.

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trary, held not unreasonable. (*Underwood* v. *Carney*, 1 Cush. 285; *Gerrard* v. *Cooke*, 2 B. & P. N. R. 100; *O'Linda* v. *Lothrop*, 21 Pick. 292.) So openings communicating with underground apartments, so long as not dangerous. (*Bacon* v. *Boston*, 3 Cush. 174.) *Lowell* v. *Spaulding*, 4 Cush. 277.) The powers here conferred are, to pass By-laws for "directing the removal of door-steps, porches, railings or other erections or obstructions" projecting into or over any road, &c. (*See Le Neve* v. *Mile End Old Town*, 8 E. & B. 1054.) Strictly speaking, no one has a right to project his building or any part of it beyond the line of road. But this does not mean a strict mathematical line. (*Tear* v. *Freebody*, 4 C. B. N. S. 228; see also *St. George's Vestry* v. *Sparrow*, 16 C. B. N. S. 209.) An obstruction beyond a substantially regular line must, if insisted upon by the Municipal authorities, be removed. (*Bauman* v. *St. Pancras*, L. R. 2 Q. B. 528; *Ecclesiastical Commissioners* v. *Clerkenwell*, 4 L. T. N. S. 599; s. c., 3 De G. F. & J. 688; *The Queen* v. *Jay*, 8 E. & B. 469.) Where a man, under contract to build according to a specified plan and according to the Metropolitan Building Acts, commenced building according to the plan, which was in some particulars in contravention of the Building Acts, and upon being cautioned by the Board stopped building and refused to proceed; *held*, that he was bound to rebuild in conformity with the plan, modified so as to meet the requirements of the Acts. (*Cubitt* v. *Smith*, 11 L. T. N. S. 298.) By-laws were made by the Local Board of Sunderland, under the English Public Health Act, 1848, s. 115, and the Local Government Act, s. 34, by one of which (No. 12) all party walls except in houses of one storey, were required, under a penalty of 40s., to be nine inches at least in thickness, and by another of which (No. 42) it was provided "that in case any offence under any of the foregoing By-laws shall continue, the person offending shall be liable to a further penalty not exceeding 40s. for each day during which such offence shall continue after written notice of the offence has been given by the Local Board to the offender." A person having been convicted and fined for an offence against the By-law No. 12, in building a party-wall four and a half inches in thickness instead of nine inches, was afterwards convicted upon an information charging him, under By-law No. 42, with *continuing* the offence, and again fined. *Held*, that suffering the party-wall to remain unaltered was not a continuing offence within By-law No. 42, or if it was, that the By-law was unreasonable,—the appropriate remedy being the removal of the structure by the Board, as authorized by sec. 34 of the Local Government Act, 1858. (*Marshall* v. *Smith*, L. R. 8 C. P. 416.) By sec. 75 of the Metropolitan Local Management Amendment Act, the erection, without the consent of the Metropolitan Board of Works, of any building, &c., in any street, &c., beyond the general line of buildings, is prohibited; and it is enacted that for any infringement of that provision, the Vestry or Board may summon the offender before a Justice, who may order the demolition by the building, and make an order as to costs; and that on default of the owner, the Vestry or Board may enter and demolish it. And sec. 107 enacts that "no person shall be liable for the payment of any *penalty* or forfeiture under the recited Acts, or that Act,

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*Numbering Houses and Lots.*

(44.) For numbering the houses and lots along the streets of the Municipality, and for affixing the numbers to the houses, buildings or other erections along the streets, (*a*) and for charging the owner or occupant of each house or lot with the expense incident to the numbering of the same; 29-30 V. c. 51, s. 296, sub. 48. Numbering houses, &c.

(45.) For keeping (and every such Council is hereby required to make and keep) (*b*) a record of the streets and numbers of the houses and lots numbered thereon respectively, and entering thereon, and every such Council is hereby required to enter thereon a division of the streets, with boundaries and distances for public inspection; 29-30 V. c. 51, s. 296, sub. 49. Record of streets, numbers, &c.

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for any offence made cognizable before a Justice, unless the complaint respecting such offence have been made before such Justice within six months next after the commission or discovery of such offence." *Held*, that the limitation clause applied only to the case of pecuniary penalties or forfeitures, and not to offences under sec. 75. (*Vestry of Bermondsey* v. *Johnson*, L. R. 8 C. P. 441; see further, *Commercial Bank* v. *Cotton*, 17 U. C. C. P. 214; s. c., in appeal, 17 U. C. C. P. 447.)

(*a*) The powers are to pass By-laws for—

1. Numbering the houses and lots along the streets of the Municipality;

2. Affixing the numbers to the houses, &c.; and for

3. Charging the owner or occupant of each house, &c., with the expense.

Some provision of this kind in large cities is not only convenient but necessary. The intention of such a statute is to give control to one public body, in order to insure the avoidance of the inconvenience of having several houses in the same street or place of the same number. Two statutes on the subject were at one time existing in London, giving similar powers to two public bodies, which powers could not, consistently with the object of the Legislature, co-exist; and so it was held that the earlier was repealed by the later statute. (*Daw* v. *Metropolitan Board of Works*, 12 C. B. N. S. 161.)

(*b*) Most of the preceding subsections are discretionary. It is in the power of the Council to refrain from exercising the powers conferred in the discretionary sections, but the provisions of this subsection are obligatory. Every Council is "hereby required" to make and keep a record of the streets and numbers, &c., for public inspection. There are cases where even the word "may" should, looking at the context, be construed as imperative. (See *The King* v. *Barlow*, 2 Salk. 609; *Crake* v. *Powell*, 2 E. & B. 210; *McDougall* v. *Paterson*, 11 C. B. 755; *The Queen* v. *Tithe Commissioners*, 14 Q. B. 459.) The object of this subsection is to avoid the inconvenience either of having several streets in the same Municipality of the same name, or several houses in the same street of the same number. (See *per* Willes, J., in *Daw* v. *Metropolitan Board of Works*, 12 C. B. N. S. 167.)

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*Naming Streets.*

For marking the boundaries of and naming streets, &c.

(46.) For surveying, settling and marking the boundary lines of all streets, roads and other public communications, and for giving names thereto, (*c*) and affixing such names at the corners thereof on either public or private property; 29-30 V. c. 51, s. 340, sub. 5.

*Levels of Cellars.*

Ascertaining levels of cellars, &c.

(47.) For ascertaining and compelling owners, tenants and occupants to furnish the Councils with the levels of the cellars heretofore dug or constructed, or which may hereafter be dug or constructed along the streets of the Municipality; (*d*) such levels to be with reference to a line fixed by the By-laws; 29-30 V. c. 51, s. 296, sub. 50.

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(*c*) The powers are—

1. For surveying, settling and marking the boundary line of all streets, &c. (see note *y* to sub. 43 of this section);

2. For giving names thereto (see note *b* to sub. 45 of this section); and

3. Affixing such names at the corners thereof, "on either public or *private* property."

The general rule is that there can be no interference with private property without the making of due compensation (see sec. 373, and notes thereto); but the interference here sanctioned is of so trivial a character, that the permission is given without any provision as to compensation.

(*d*) It has been held that authority to a Municipal Corporation "to repair and keep in order its streets," enabled the Corporation, without special power, to construct drains and sewers. (*Fisher* v. *Harrisburg*, 2 Grant (Pa.), 291; *Cone* v. *Hartford*, 28 Conn. 363; see also *Borough* v. *Shortz*, 61 Pa. St. 399; *Stroud* v. *Philadelphia*, *Ib.* 255; *State* v. *Jersey City*, 1 Vrom. (N. J.) 148; *State* v. *Jersey City*, 3 Dutch. (N. J.) 493; *State* v. *Jersey City*, 5 *Ib.* 441.) So it has been decided in Massachusetts, that authority "to make needful and salutary By-laws," or authority "to make regulations for the public health," in the absence of more specific power, would enable a City Corporation to construct a common sewer, and subject the owners of land abutting, and who use the sewer, to contribution for expenditure (*Boston* v. *Shaw*, 1 Metc. 130); and it was held that the assessment in respect thereto was valid, although the greater part of one lot assessed was lower than the bottom of the sewer, as it might and probably would be graded so as to receive as much benefit as other lots. (*Downer* v. *Boston*, 7 Cush. 277; see also *Wright* v. *Boston*, 9 Cush. 233; *People* v. *Brooklyn*, 6 Barb. 209; *Patton* v. *Springfield*, 99 Mass. 627.) But in order that there may be uniformity, power is by this subsection given to pass By-laws for ascertaining and compelling owners, tenants and occupants to furnish the Councils with the level of the cellars heretofore dug or constructed, or which may hereafter be dug or constructed along the streets of the Municipality. A Municipal Corporation is not liable to a civil action for neglecting to pass a By-law and provide

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(48.) For compelling to be deposited with an officer, to be named in the By-law, before commencing the erection of any

Compelling the furnishing of ground or block plan of buildings to be erected.

for some plan of draining the Municipality or some part thereof (*Mills* v. *Brooklyn*, 32 N. Y. 489; *Wilson* v. *New York*, 1 Denio. 595; *Child* v. *Boston*, 4 Allen, 41; *City Council* v. *Gilmer*, 33 Ala. 116; *Carr* v. *Northern Liberties*, 35 Penn. St. 324); nor for any want of efficiency in the plan adopted. (*Child* v. *Boston*, 4 Allen, 41; *Mills* v. *Brooklyn*, 32 N. Y. 489; *Barry* v. *Lowell*, 8 Allen, 127; *Flagg* v. *Worcester*, 13 Gray, 601; *Dermont* v. *Detroit*, 4 Mich. 135; *Carr* v. *Northern Liberties*, 35 Penn. St. 324; see further, note *g* to sub. 27 of sec. 384.) A Corporation may be said to act judicially in selecting and adopting the plan on which a public work shall be constructed; yet as soon as it begins to carry out that plan, it acts ministerially, and is bound to see that the work is done in a reasonably safe and skilful manner. (*Rochester White Lead Co.* v. *Rochester*, 3 Comst. (N.Y.) 463; *Barton* v. *Syracuse*, 36 N.Y. 54; *Lacour* v. *New York*, 3 Duer, 406; *Lloyd* v. *New York*, 1 Seld. (N.Y.) 369; *Jones* v. *New Haven*, 34 Conn. 1; *Parker* v. *Lowell*, 11 Gray, 353; *Wilson* v. *New York*, 1 Denio. 595; *Logansport* v. *Wright*, 25 Ind. 512; *Martin* v. *Brooklyn*, 1 Hill, 545; *Mellen* v. *Western Railroad Co.*, 4 Gray, 301; *Mills* v. *Brooklyn*, 32 N.Y. 489; *Child* v. *Boston*, 4 Allen, 41; *Wheeler* v, *Worcester*, 10 Allen, 591; *Eastman* v. *Meredith*, 36 N. H. 284; *Meares* v. *Wilmington*, 9 Ired. (N. Car.) 73; *Delmonico* v. *New York*, 1 Sandf. 222; *Munn* v. *Pittsburgh*, 40 Penn. St. 364; *Memphis* v. *Lasser*, 9 Humph. 757; *Detroit* v. *Corey*, 9 Mich. 165; *Grant* v. *Brooklyn*, 41 Barb. 381; see also *Halliday* v. *St. Leonard's, Shoreditch*, 11 C. B. N.S. 192; *Parsons* v. *Bethnal Green*, 17 L. T. N. S. 211.) A Municipal Corporation would act judiciously in insisting on having drains made under the direction of their officers and by their own workmen and contractors, instead of the private proprietors, for it would not do to allow all persons to break into a main sewer and make drains at their discretion. Besides the inconvenience, the health of the community would suffer from such a course, for the nuisance occasioned by defective drainage may often give rise to a wide-spread evil, injuring many more than the persons on whose premises the cause of the nuisance exists. It seems a necessary policy, therefore, for such a Corporation to keep the matter in their own hands. But then, if the Corporation does, for such good purposes, prevent proprietors from making the drains they require, and oblige them to have them done by the Corporation engineer and contractors, it is manifestly just and necessary that the Corporation should see that the work is done as it ought to be. (*Per* Robinson, C. J., in *Reeves* v. *Toronto*, 21 U. C. Q. B. 160.) Where a drain was so unskilfully constructed by the Corporation contractors as not to carry off water, but to carry filth from the main sewer into plaintiff's cellar, which for months he had endured, it was held that he was entitled to sue the Corporation for the recovery of substantial damages, though no By-law for the making of the drain was proved. (*Ib.*) So where the drain, though properly constructed, was not kept cleaned, whereby it became choked up and the overflow ran into the plaintiff's premises. (*Meek* v. *Whitechapel Board of Works*, 2 F. & F. 144.) So if, in the construction of a drain by Corporation contractors, quantities of earth be thrown up and permitted to continue, so that in times of rain mud and water are



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building, a ground or block plan of such building, with the levels of the cellars and basements thereof, (*e*) with reference

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driven on a person's premises, he is entitled to sue the Corporation for damages. (*Farrell* v. *London*, 12 U. C. Q. B. 343; see also *Jones* v. *Bird*, 5 B. & Al. 837; *Drew* v. *New River Co.*, 6 C. & P. 754; *Grocers' Company* v. *Donne*, 3 Bing. N. C. 34; *Coe* v. *Wise*, 7 B. & S. 831; but see *Ward* v. *Lee*, 7 E. & B. 426; *Clothier* v. *Webster*, 12 C. B. N. S. 790.) Without positive legislation, a grave doubt may be expressed as to the absolute right of the conservators of a highway to flood a man's land and destroy his property, even if no other method of drainage be attainable. (*Per* Hagarty, J., in *Perdue and Chinguacousy*, 25 U. C. Q. B. 61, 65, 66.) "I cannot conceive what right they (a Township Municipal Council) can have to drain all the surface waters of that Township, or of any particular area, up against the land of another, and to drown it in part, or altogether to the destruction of his farm, although they may have done their work in the most skilful and scientific manner, and although it may have been absolutely necessary to drain in this manner for the making of a good road." (*Per* Wilson, J., in *Rowe* v. *Rochester*, 29 U. C. Q. B. 590–595.) "I concur with my brother Wilson's judgment, and I do so with great hesitation, but I cannot see my way to a more satisfactory conclusion." (*Per* Morrison, J., *Ib.* 598.) A Municipal Corporation can acquire the right to turn a stream of water upon the lands of another, to the injury thereof, only by an exercise of the power of eminent domain. (*Pettigrew* v. *Evansville*, 23 Wis. 223; 3 Am. Rep. 50; see also *Smith* v. *Washington*, 20 How. 135; *Hildreth* v. *Lowell*, 11 Gray, 345; *Stainton* v. *Metropolitan Board of Works*, 23 Beav. 225; 3 Jur. N. S. 257; *Cator* v. *Lewisham*, 5 B. & S. 115; and notes to sec. 373 of this Act.)

(*e*) It is, under sec. 76 of the Metropolis Local Management Act, 18 & 19 Vic. cap. 120, the duty of every person, before beginning to lay or dig the foundation of any new house or building, &c., to give seven days' notice in writing to the Vestry, &c. The same section provides that every such foundation shall be laid at such level as will permit the drainage of such house or building in compliance with the Act, and as the Vestry, &c., shall order; also that every such drain shall be made in such direction, manner and form, and of such materials and workmanship, and with such branches thereto, and as the Vestry, &c., shall order; and that if the house, building or drain, &c., be begun, erected, made or provided in any respect contrary to the order of the Vestry, &c., it shall be lawful for the Vestry, &c., to cause such house or building to be demolished, &c. It was held that there was no power to demolish without first giving the party guilty of the omission an opportunity to be heard. (*Cooper* v. *Board of Works for Wandsworth District*, 14 C. B. N. S. 180.) No man shall be condemned in person or property without an opportunity of being heard in his defence. (See *The King* v. *Cambridge*, 1 Str. 557; *The King* v. *Benn*, 6 T. R. 198; *Harper* v. *Carr*, 7 T. R. 270; *Capel* v. *Child*, 2 C. & J. 558; *Hammond* v. *Bendyshe*, 13 Q. B. 869; *Painter* v. *Liverpool Oil Gas Co.*, 3 A. & E. 433; *Re Hammersmith Case*, 4 Ex. 87.) Such a condemnation would be contrary to the principles of natural justice. (*Bullen* v. *Moodie*, 13 C. P. 126; *Switzer* v. *Brown*, 20 C. P. 193; *The Queen* v. *Cheshire Line's Committee*, L. R. 8 Q. B. 344; see also 3 F. & F. 548, *et seq.*, note.) "The objection

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to a line fixed by the By-laws; (*f*) 29-30 V. c. 51, s. 296, sub. 51.

*Sewerage.*

(49.) For regulating the construction of cellars, sinks, water-closets, privies and privy vaults, and the manner of draining the same; (*g*) 29-30 V. c. 51, s. 296, sub. 52. Cellars, sinks, &c.

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for want of notice can never be got over. The laws of God and man both give the party an opportunity to make his defence if he has any. I remember to have heard it observed by a very learned man, upon such an occasion, that even GOD himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam, (says GOD) where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat?' And the same question was put to Eve also." (*Per* Fortescue, J., in *The King* v. *Cambridge*, 1 Str. 566, cited by Byles, J., in *Cooper* v. *Board of Works, for Wandsworth District*, 14 C. B. N. S. 195.) The 18 & 19 Vic. cap. 120, was held not to apply to a case of the mere removal of a building. (*Major* v. *Park Lane Co.*, L. R. 2 Eq. 453.)

(*f*) Where the Vestry directed drainage pipes to be "stoneware pipes of the best quality," the use of Aylesford pipes was held not to be a sufficient compliance. (*Austin* v. *St. Mary, Lambeth*, 4 Jur. N. S. 274; s. c. 27 L. J. Ch. 677.)

(*g*) It was held, under 18 & 19 Vic. cap. 120, that the Metropolitan District Board of Works had no power to lay down any general or arbitrary rule, requiring *all* owners or occupiers of houses situate within its district to convert privies into water-closets. (*Tinkler* v. *Wandsworth District Board of Works*, 2 De G. & J. 261; s. c. 4 Jur. N. S. 293.) "The question is not whether they have power to cause or order privies within their district to be put in a proper and decent state, if not in that state, but it is whether they have the right or power to force on the plaintiff the mechanical contrivance of water-closets, with their requisite apparatus, for which he is to find water supply as best he may, instead of the privies which, sufficient as privies if kept in a condition proper for such conveniences, are upon his land for the purposes of his cottages there. The claim of the defendants in that respect appears to me manifestly groundless." (*Per* Knight Bruce, L. J., *Ib.* 294.) But an order may be made for the conversion of an insufficient privy into a water-closet. (*St. Luke's* v. *Lewis*, 1 B. & S. 864.) The Court of Chancery will not interfere by injunction to prevent a Municipal Corporation exercising *bona fide* the powers conferred upon it by the Legislature—for example, in this case, the erection of a urinal. (*Biddulph* v. *St. George's, Hanover Square*, 9 Jur. N. S. 434; reversed, 9 Jur. N. S. 953.) The cleansing of cellars, sinks, water-closets, privies, privy vaults, &c., is *prima facie* the duty of the occupant. (*Russell* v. *Shenton*, 3 Q. B. 449.) If the privy be in such a condition at the time of the letting as to be a nuisance, both owner and tenant are liable to be prosecuted; but if it become in such a condition after the letting, the tenant or occupant only is responsible. (*The Queen* v. *Osler*, 32 U. C. Q. B. 324.) An agent merely to receive rent is not liable to be prosecuted in respect of any such nuisance. (*Ib.*; see further, *Peck* v. *Waterloo and Seaforth Local Board of Health*, 9 L. T. N. S. 338.) If the owner

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Filling in hollow places, drains, &c.

(50.) For compelling or regulating the filling up, draining, clearing, altering, relaying and repairing of any grounds, yards, vacant lots, cellars, private drains, sinks, cesspools and privies; (*h*) and for assessing the owners or occupiers of such grounds or yards, or of the real estate on which the cellars, private drains, sinks, cesspools and privies are situate, with the cost thereof if done by the Council on their default; (*i*) 29-30 V. c. 51, s. 296, sub. 53.

Sewerage and drainage.

(51.) For making any other regulations for sewerage or drainage (*j*) that may be deemed necessary for sanitary

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of land on which there is a house construct on the other part of the land a sewer and let the house, and afterwards, by reason of the original faulty construction of it and the continued use of it by the owner in the faulty state, the house is injured, the owner is liable to the lessee for keeping and continuing the sewer so constructed. (*Alston* v. *Grant*, 3 E. & B. 128.)

(*h*) A clause of a By-law requiring that "all grounds, yards, vacant lots *or other properties* abutting on any street, should be drained," was held valid. (*In re McCutchon and Toronto*, 22 U. C. Q. B. 613.) The sixth section of a By-law requiring all grounds, &c., not already drained, abutting on any street with a common sewer, to be drained into the same within fourteen days from the advertising of the By-law for one week—the seventh section imposing a penalty on any one of not less than one dollar nor more than ten dollars for each month he should omit to do so—and the eighth providing for enforcing payment by distress, or imprisonment not exceeding thirty-one days, were quashed as illegal. (*Ib.*) A subsequent By-law added to the eighth section above mentioned a proviso, that any person thereby required to construct a drain who should not do so, but be willing to pay the same rent as if he were using the sewer, should be exempt from penalties, was also quashed. (*Ib.*)

(*i*) The statute refers as well to sewers, &c., constructed, as to be constructed (*In re McCutchon and Toronto*, 22 U. C. Q. B. 613), and though authorizing the passing of a By-law to compel drainage, couples it with a power to assess the cost thereof, if done by the Council, on the owner or occupier, in default; thus pointing out how "the compelling" is to be carried out. (*Ib.* 619) The charge, moreover, if the work be done by the Corporation, is a personal charge, and not a charge on the land (*Moore* v. *Hymes*, 22 U. C. Q. B. 107), and so not to be enforced by the same means as ordinary assessments. (*In re McCutchon and Toronto*, 22 U. C. Q. B. 613.)

(*j*) "Sewerage" or "drainage." Sewer, in its general sense, may mean the whole apparatus, and in its specific sense, a drain or part of that apparatus. (*Per* Lord Campbell, in *Poplar Board of Works* v. *Knight*, 1 E. & B. & E. 408–429.) A stream supplied by the drainage, natural and artificial, of cultivated land, and receiving the drainage of two or three inhabited houses in its passage to the river into which it flows, was held not to be a sewer within the meaning of the English Public Health Act, 1848, 11 & 12 Vic. cap. 63. (*The Queen* v. *Godmanchester*, L. R. 1 Q. B. 328.) In order to make a

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purposes; (*k*) 29-30 V. c. 51, s. 296, sub. 54.

(52.) For charging all persons who own or occupy property which is drained into a common sewer, or which, by any By-law of the Council, is required to be drained into such sewer, with a reasonable rent for the use of the same; (*l*) and for regulating the time or times and manner in which the same is to be paid; 29-30 Vic. c. 51, s. 296, sub. 55. Charging rent for sewers.

*Licensing Transient Traders.*

(53.) For licensing, regulating and governing transient traders and other persons who occupy premises in the City Regulating transient traders.

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Municipal Corporation liable for damage arising from a defective sewer, evidence must not only be given of negligence on the part of the Corporation in the management of the sewer, but it must be shown that they constructed the sewer, or are in some other manner responsible for its maintenance. (*Bateman* v. *Hamilton*, 33 U. C. Q. B. 244.)

(*k*) See note *d* to sub. 47 of this section.

(*l*) The power is to charge not only all persons who own or occupy property which *is* drained into a common sewer, but "*which*, by any law of the Council, *is required to be drained* into such sewer," whether drained or not. In England it has been held that all persons whose property derives any advantage from the works of Commissioners of Sewers, may be assessed in respect of that property. (*Soady* v. *Wilson*, 3 A. & E. 248.) Where a district within one Commission of Sewers was divided into separate levels, each drained by a separate line of sewers and deriving no benefit from the sewers in the others, each level was required to be separately rated (*The Queen* v. *Tower Hamlets Commissioners*, 9 B. & C. 517), and it was held that the party sued might show, notwithstanding the decision of the Commissioners, that he derived no benefit from the sewer as a defence to the action. (*Stafford* v. *Hamston*, 2 B. & B. 691.) It was also held, that under the English Acts it was not alone sufficient to justify an assessment to the sewer rate that the property should derive some benefit from the drainage; but it was also necessary that there should be an occupier of the property assessed. (*Neave* v. *Weather*, 3 Q. B. 984; *Tracey* v. *Taylor*, *Ib.* 966.) A tenement in the King's Dockyard deriving a benefit from public sewers, and occupied by an officer of the Government paying no rent, was held subject to sewerage rate. (*Netherton* v. *Ward*, 3 B. & Al. 21.) The power is to charge "a reasonable rent for the use of the sewer." An amercement on a Township generally, and a distress on one of the parties liable, by Commissioners of Sewers, was held good (*Ramsay* v. *Nornabell*, 11 A. & E. 383); but it was held that no distress could be levied for any such purpose within the precincts of a royal palace occupied as the residence of the sovereign. (*Attorney-General* v. *Donaldson*, 10 M. & W. 117.) The owner or occupier of property drained, or required to be drained, by a sewerage By-law, may legally be allowed to commute by paying a fixed sum in gross, in discharge of the annual rental. (*In re McCutchon* v. *Toronto*, 2 U. C. Q. B. 613.) The charge is a personal one. (See note *i* to sub. 50 of this section.)

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or Town, or Incorporated Village, for temporary periods, (*m*) and whose names have not been duly entered on the Assessment Roll in respect of income or personal property for the then current year; 33 V. c. 26, s. 7.

*User of Streets.*

Regulating traffic in streets, wheels, &c.

(54.) For regulating the conveyance of traffic in the public streets, (*n*) and the width of the tires and wheels of all vehicles used for the conveyance of articles of burden, goods, wares, or merchandize.

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(*m*) Taxes are usually imposed annually. Persons liable are generally assessed in the commencement of the year; the taxes are afterwards imposed, and not collected till the fall of the year. Traders who live in the Municipality throughout the year cannot well escape taxation; but those who come into the Municipality after the Assessment Roll is completed, or leave it before the Collectors' Roll is completed and in the hands of the Collectors, would escape if there were no such provision as the one here annotated. Power is given by By-law to *license*, *regulate* and *govern* such traders. The power to license includes the power to charge a reasonable fee for the license, and to prevent the doing of business till such fee be paid. (See sec. 383, sub. 3, and notes thereto, as to hawkers, pedlers, &c.)

(*n*) The powers here conferred are for regulating—

1. The conveyance of traffic in the public streets;

2. And the width of the tires and wheels of all vehicles used for the conveyance of articles of burden, &c.

It would seem that the Municipal Council may pass By-laws regulating the rate of speed allowable in the public streets, the route over which omnibuses may pass, and the time of day for which particular streets may be used for particular purposes. (*Commonwealth* v. *Stodder*, 2 Cush. 562; *Commonwealth* v. *Robertson*, 5 Cush. 438; *Vanderbilt* v. *Adams*, 7 Cowen, 349–352; *Washington* v. *Nasville*, 1 Swan. 177.) So to pass By-laws regulating the removal of buildings, and the temporary use of the streets for that purpose. (*Day* v. *Green*, 4 Cush. 433–437.) So to prevent the unnecessary obstruction of streets and crossings by railway cars (*Davis* v. *New York*, 14 N. Y. 506); also to prohibit the use of steam, and regulate the speed of such cars (*Donnaher* v. *State*, 8 Sm. & Mar. (Miss.) 649; *Railroad Co.* v. *Buffalo*, 5 Hill (N.Y.) 209; *Hentz* v. *Long Island Railroad Co.*, 13 Barb. 646), unless there be something in the special charter of the company or general law of the land to the contrary. (*State* v. *Jersey City*, 5 Dutch. (N. J.) 170.) In England Legislative sanction is necessary to enable a company to occupy the streets for a horse or street railway. (*The Queen* v. *Train*, 9 Cox. 180, *Galbreath* v. *Armour*, 4 Bell (App. C.) 374; see also *The Queen* v. *Gas Co.*, 2 E. & E. 651; *The Queen* v. *Charlesworth*, 16 Q. B. 1012.) So in the United States. (*Boston* v. *Richardson*, 13 Allen, 146; *City Railroad Co.* v. *Memphis*, 4 Coldw. (Tenn.) 406.) The Legislature may authorize Municipal Councils to give or withhold an absolute assent to such a use of their streets, or provide for use upon certain conditions.

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DIVISION VI.—POWERS OF COUNCILS OF CITIES AND TOWNS.

**385.** The Council of every City and Town (*a*) may pass By-laws: By-laws for—

*Intelligence Offices.*

(1). For licensing suitable persons to keep Intelligence Offices, for registering the names and residences of, and giving information to, or procuring servants for, employers in want of domestics or labourers, and for registering the names and residences of, and giving information to, or procuring employment for, domestics, servants and other labourers desiring employment, (*b*) and for fixing the fees to Licensing intelligence offices.

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(*Railroad Co.* v. *Baltimore*, 21 Md. 93; *Railroad Co.* v. *Leavenworth*, 1 Dillon (C. C.), 393; *Moses* v. *Railroad Co.*, 21 Ill. 516–522; *Frankford Passenger Railroad Co.* v. *Philadelphia*, 58 Pa. St. 119; *Clinton* v. *Railroad Co.*, 24 Iowa, 455; *People* v. *Kerr*, 27 N.Y. 188; *Hinchman* v. *delphia* v. *Railroad Co.*, 3 Grant (Pa.) 403; *Commonwealth* v. *Central Patterson Horse Railroad Co.*, 17 N. J. (Eq. 2 C. E. Green) 75; *Phila-Passenger Railroad Co.*, 52 Penn. St. 506; *Railroad Co.* v. *O'Daily*, 12 Ind. 551; *Railroad Co.* v. *Applegate*, 8 Dana. (Ky.) 289; *City Railroad Co.* v. *Louisville*, 4 Bush. (Ky.) 478; *People* v. *Railroad Co.*, 45 Barb. 73; *Railroad Co.* v. *Adams*, 3 Head. (Tenn.) 596; *Sixth Avenue Railroad Co.* v. *Kerr*, 45 Barb. 138; *McFarland* v. *Railroad Co.*, 2 Beasl. (N.J.) 314; *Brooklyn Railroad Co.* v. *Railroad Co.*, 32 Barb. 358; *Railroad Co.* v. *New York*, 1 Hilton (N.Y.), 562; *Mercer* v. *Railroad Co.*, 36 Pa. St. 99; *City Railroad Co.* v. *Memphis*, 4 Coldw. (Tenn.) 406; *City Railroad Co.* v. *City Railroad Co.*, 20 N. J. (Eq.) 61.) But direct authority to a Company to carry passengers over the streets of a city does not exempt the company from a certain amount of Municipal control in the conduct of its business. (*Frankford Passenger Co.* v. *Philadelphia*, 58 Pa. St. 119; *State* v. *Herod*, 29 Iowa, 123; *City Railroad Co.* v. *Louisville*, 4 Bush. (Ky.) 478.) County Councils are now expressly empowered to provide by By-law for the making of a double track during the season of sleighing. (36 Vic. cap. 46, s. 1.) The double track must be so made that teams shall be able to pass without being obliged to turn out when meeting each other. (Sec. 2.) The right hand track is that in which a team is required to travel. (Sec. 3.) Special provision is made for keeping open the double tracks. (Secs. 4, 5, 6.) Any person travelling in the wrong or left hand track, and refusing or neglecting to leave the same when met by a person travelling thereon as of right, is subject to a penalty. (Sec. 7.) The word "team," as used in the Act, is declared to mean "a vehicle, drawn by one horse or other animal, or a greater number of horses or other animals," as the case may be. (Sec. 8; see further, note *x* to sub. 42 of this section.)

(*a*) Not applicable to *Counties* or *Incorporated Villages*.

(*b*) The powers are to pass By-laws—

1. For licensing suitable persons to keep Intelligence Offices;
2. For fixing the fees to be received by the keepers of such offices.

The fee is not to exceed ten dollars for one year. (See note *f* to sub. 5 of sec. 379.) An Intelligence Office, within the meaning of

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be received by the keepers of such offices; 29-30 V.. c 51, s. 299, sub. 1.

Regulation of.

(2.) For the regulation of such Intelligence Offices; (*c*) 29-30 V. c. 51, s. 299, sub. 2.

Duration of license.

(3.) For limiting the duration of or revoking any such license; (*d*) 29-30 V. c. 51, s. 299, sub. 3.

Prohibition of, without license.

(4.) For prohibiting the opening or keeping any such Intelligence Office within the Municipality without license; (*e*) 29-30 V. c. 51, s. 299, sub. 4.

Fee for.

(5.) For fixing the fee to be paid for such license, not exceeding ten dollars for one year; (*f*) 29-30 V. c. 51, s. 299, sub. 5.

*Wooden Buildings.*

Regulating erection of wooden buildings and fences.

Construction of buildings within fire limits.

(6.) For regulating the erection of buildings, and preventing the erection of wooden buildings, or additions thereto, and wooden fences, in specified parts of the City or Town; and also for prohibiting the erection or placing of buildings, other than with main walls of brick, iron or stone, and roofing of incombustible material, (*g*) within defined areas

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this section, is an office for giving information either to domestics or labourers in want of employment, or to persons desirous of employing domestics or labourers.

(*c*) The former subsection is for the licensing of suitable persons to keep Intelligence Offices; this for the regulation of the offices.

(*d*) The license will, it is presumed, be an annual one, granted upon conditions as to conforming to regulations, and revocable at any time for breach of the conditions.

(*e*) The power to license would, if there were no express legislation on the subject, involve the power of preventing persons exercising the calling without a license. But the Legislature has not left the matter to inference, as the power is here for prohibiting the opening or keeping of such an office without a license.

(*f*) If there were no limitation as to the amount of the fee, it would still have to be a reasonable one. (See sub. 18 of sec. 379.) Ten dollars is the maximum according to this section. The Municipal Council may fix the amount at that or any less sum. *(Ib.)*

(*g*) The powers here conferred are for—

1. *Regulating* the erection of buildings in specified parts of the City or Town;

2. *Preventing* the erection of *wooden* buildings or additions thereto, and wooden fences, in specified parts of the City or Town;

3. *Prohibiting* the erection or placing of buildings *other* than with main walls of brick, iron or stone, and roofing of incombustible material, within defined areas of the City or Town;

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of the City or Town, and for authorizing the pulling down or removal, at the expense of the owner thereof, of any building or erection which may be constructed or placed in contravention of any By-law; 29-30 V. c. 51, s. 299, sub. 6.

*Police.*

(7.) For establishing, regulating and maintaining a Police, (*h*) but subject to the other provisions of this Act on that head; 29-30 V. c. 51, s. 299, sub. 7. Police.

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4. *Authorizing* the *pulling down* or *removal*, at the expense of the owner thereof, of *any* building or erection which may be constructed or placed in contravention of any By-law.

The "specified parts of the City or Town" mentioned in the first part of the subsection, and "defined areas of the City or Town" mentioned in the latter part thereof, mean substantially one and the same thing, viz., the ascertainment of a certain area having certain limits within which prohibited buildings are not to be erected, and other buildings to be regulated—in other words, the establishment of fire limits. The right of a Municipal Council, in the absence of express power, to pass such By-laws is not very clear. (See *Mayor, &c.* v. *Thorne*, 7 Paige, 261; *City Council* v. *Elford*, 1 McMullen (S.C.) 234; *Brady* v. *Insurance Co.*, 11 Mich. 425; *Douglass* v. *Commonwealth*, 2 Rawle, 262; *Vanderbilt* v. *Adams*, 7 Cowen, 349; *Respublica* v. *Duquet*, 2 Yeates (Pa.) 493.) Where a Municipal Corporation, under power to prevent the erection of *wooden* buildings, passed a By-law restraining the erection of lath-and-plaster buildings within certain limits, the By-law as to the excess was held void. (*Attorney-General* v. *Campbell*, 19 Grant, 299.) The *power*, since the last-mentioned decision, has, it will be observed upon reading the subsection, been extended to the prohibition of buildings "*other* than those having main walls of brick, iron or stone, and roofing of incombustible material." The removal of a wooden building to the prohibited district would be an "erection" or "placing," within the meaning of such a By-law. (*Wadleigh* v. *Gilman*, 12 Me. 403; see further, *Shiel* v. *Sunderland*, 6 H. & N. 796; *Hobbs* v. *Dance*, L. R. 9 C. P. 30.) Ordinary repairs would not, however, be either an "erection" or "placing." (*Brady* v. *Insurance Co.*, 11 Mich. 425, 469; *Booth* v. *State*, 4 Conn. 65; *Brown* v. *Hunn*, 27 Conn. 332; *Tuttle* v. *State*, 4 Conn. 68; *Stewart* v. *Commonwealth*, 10 Watts, 307.) The power to pull down or remove a building erected or placed in contravention of the By-law, though a necessary, is a strong power (see note *m* to sub. 10 of sec. 379), and should only be exercised in cases clearly of contravention, and after notice to the person offending, so as to give him an opportunity to show cause before the destruction of his property. (See note *e* to sub. 48 of sec. 384.) It would seem that a person specially injured by the contravention of such a By-law would have an action against the wrong-doer. (*Aldrich* v. *Howard*, 7 Rh. Is. 199.) Suffering the prohibited building to remain after fine would appear not to be a continuing offence, so as to subject the offender to second fine. The remedy in such a case would appear rather to be the demolition of the building. (See note *y* to sub. 43 of sec. 384.)

(*h*) "A Police." See sec. 339, and notes thereto.

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*Industrial Farm—Exhibitions.*

Industrial farms, parks, &c.

(8.) For acquiring any estate in landed property within or without the City or Town for an industrial farm, or for a public park, garden or walk, or for a place for exhibitions, (*i*) and for the disposal thereof when no longer required for the purpose; (*k*) and for accepting and taking charge of landed property, within or without the City or Town, dedicated for a public park, garden or walk for the use of the inhabitants of the City or Town; 29-30 V. c. 51, s. 299, sub. 8.

Buildings thereon.

(9.) For the erection thereon of buildings and fences for the purposes of the farm, park, garden, walk or place for exhibitions, as the Council deems necessary; (*l*) 29-30 V. c. 51, s. 299, sub. 9.

Managing the same.

(10.) For the management of the farm, park, garden, walk, or place for exhibitions and buildings; (*m*) 29-30 V. c. 51, s. 299, sub. 10.

*Charities.*

Almshouses, &c.

(11.) For establishing and regulating within the City or Town, or on the industrial farm or ground held for public

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(*i*) The power to acquire land outside the limits of the Municipality for any purpose, is not one ordinarily conferred on Municipal Corporations. (See note *j* to sec. 16.) The purposes here mentioned are:

1. For an industrial farm;
2. For a public park, garden or walk;
3. Or for a place for exhibitions.

The acquirement of land for such purposes is one intended for the benefit of the public health and public welfare. (See *In re Central Park Extension*, 16 Abb. Pr. 56; *Park Commissioners* v. *Williams*, 51 Ill. 57; *Owners, &c.* v. *Albany*, 15 Wend. 374.) Land may be so acquired for public parks, gardens or walks by purchase or by dedication. The words on a plan, "Garden Square," held not necessarily to imply a dedication. (*Pella* v. *Scholte*, 24 Iowa, 283.) So of the words "The Park." (*Perrin* v. *Railway Co.*, 36 N.Y. 120; *Price* v. *Thompson*, 48 Mo. 363.) "Spencer Square." (*Logansport* v. *Dunn*, 8 Ind. 178.) "Colosseum." (*Livandais* v. *Municipality*, 16 La. 512; *Xiques* v. *Bujac*, 7 La. An. 499; *Cox* v. *Griffin*, 18 Geo. 728.) The words "Depôt of O. & P. Railroad" do not show a dedication to the public. (*Todd* v. *Railroad Co.*, 19 Ohio St. 514.)

(*k*) See note *c* to sub. 1 of sec. 372.

(*l*) There is no limit as to the cost or character of the buildings and fences, &c. Such "as the Council deems necessary" may be erected.

(*m*) The management of the farm, park, &c., must of course be subordinate to the use intended. The regulations for management must not be contrary thereto but in furtherance thereof.

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exhibitions, one or more almshouses or houses of refuge for the relief of the destitute, (*n*) and also for aiding charitable institutions within the City or Town; (*o*) 29-30 V. c. 51, s. 299, sub. 11.

*Corporation Surveyor.*

(12.) For appointing any Provincial Land Surveyor to be the Corporation Surveyor; (*p*) 29-30 V. c. 51, s. 300, sub. 1. Corporation surveyor.

*Gas and Water.*

(13.) For lighting the Municipality, (*q*) and for this purpose performing any work and placing any fixtures that are necessary on private property; 29-30 V. c. 51, s. 300, sub. 2. Lighting with gas.

(14.) For laying down gas or water pipes in any street, and opening streets for the purpose; (*r*) and for taking up or repairing such pipes, and for using every power and Laying down gas and water pipes.

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(*n*) "Destitute." The poor taken notice of by the English law, which is a complete system, are—

1. Poor by impotency: as the aged or decrepit, fatherless or motherless, poor under sickness, and persons who are idiots, lunatics, lame, blind, &c.;

2. Poor by casualty: such as able-bodied persons decayed or ruined by unavoidable misfortunes, or otherwise out of employment, and unable to procure employment;

3. Poor by prodigality and debauchery; also those called thriftless poor, as idle, slothful persons. (See further, note *p* to sub. 7 of sec. 372.)

(*o*) A Municipal Corporation has no power, in the absence of express Legislative authority, to grant money in aid of any local object *outside* the limits of the Municipality. (See note *j* to sec. 16.)

(*p*) Municipal Corporations have an implied power to appoint all such officers as are necessary for corporate purposes. (See note *r* to sec. 184.)

(*q*) Municipal Councils are empowered to authorize any corporate gas or water company to lay down pipes or conduits for the conveyance of gas or water under streets or public squares. (Sec. 379, sub. 23.) This power in subordinate to the right of the public to use the streets and public squares for public purposes, and subject to as little inconvenience to the public as compatible with the exercise of the authority. (See notes to same.) The object of this subsection is to enable the Corporations of Cities and Towns, if so disposed, themselves to erect the necessary works to light the Municipality, instead of contracting with a private company. The next subsection makes similar provision for the supply of water. The work is to be done by Commissioners. (See sub. 16.) It is presumed that any interference with private property for either purpose would be subject to the right of the owner to claim compensation. (See sec. 373, and notes thereto.)

(*r*) See preceding note.

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privilege given to any gas or water company incorporated in the Municipality as if the same were specially given by this Act, subject, however, to the provisions herein contained as to the erection of gas or water works and levying rates therefor; 29-30 V. c. 51, s. 300, sub. 3.

Inspection of gas meters.

(15.) For providing for the inspection of gas meters; (*s*) 29-30 V. c. 51, s. 300, sub. 8.

Commissioners for erection of gas or water works.

(16.) For providing for the appointment of three Commissioners for entering into contracts for the construction of gas and water works,—for superintending the construction of the same,—for managing the works when completed,—and for providing for the election of the said Commissioners by the electors from time to time, (*t*) and at such periods and for such terms as the Council may appoint by the By-law authorizing the election; 29-30 V. c. 51, s. 300, sub. 9.

Construction of gas and water works.

(17.) For constructing gas and water works, and for levying an annual special rate to defray the yearly interest of the expenditure therefor, and to form an equal yearly sinking fund for the payment of the principal within such time as shall not exceed thirty years, nor be less than five years. (*u*) 29-30 V. c. 51, s. 300, sub. 4.

Estimate to be published and notice of taking poll on by-law.

**386.** No By-law under the last subsection shall be passed: (*a*) Firstly, until estimates of the intended expen-

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(*s*) This has recently been the subject of an Act of the Dominion Legislature. (36 Vic. cap. 48.)

(*t*) The powers are for—

1. *Providing* for the appointment of three Commissioners for entering into contracts for the construction of gas or water works;

2. *Superintending* the construction of the same;

3. *Managing* the works when completed;

4. Providing for the election of the Commissioners by the electors from time to time, &c.

(*u*) The By-law is made subject to a vote of the people. (Secs. 386, 387.)

(*a*) The requisites, under this section, to the validity of the By-law, appear to be the following:

1. Publication of estimates of the intended expenditure, for one month;

2. Publication of the notice of the time appointed for taking a poll, for two months;

3. Publication of a copy of the proposed By-law as the same may be ultimately passed, *and* a notice of the day appointed for finally considering the same, for three months;

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diture have been published for one month, and notice of the time appointed for taking a poll of the electors on the proposed By-law has been published for two months, and a copy of the proposed By-law at length as the same may be ultimately passed, and a notice of the day appointed for finally considering the same in Council, have been published for three months in some newspaper in the Municipality; or if no newspaper is published therein, then in some newspaper in the County in which the Municipality is situate; (*b*)

Poll to be held, and majority must be in favour.

Nor, secondly, until at a poll, held in the same manner and at the same places, and continued for the same time as at elections for Councillors, a majority of the electors (*c*) voting at the poll vote in favour of the By-law;

By-law to be passed within three months.

Nor, thirdly, unless the By-law is passed within three months after holding said poll. (*d*) 29-30 V. c. 51, s. 300, sub. 5.

If by-law rejected.

**387.** If the proposed By-law is rejected at such poll, no other By-law for the same purpose shall be submitted to the electors during the current year. (*e*) 29-30 V. c. 51, s. 300, sub. 6.

Provisions where there is a gas or water company incorporated for the municipality.

**388.** In case there be any Gas or Water Company incorporated for the Municipality, the Council shall not levy any gas or water rate until (*f*) such Council has by By-law fixed

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4. Ratification of the By-law by a majority of the electors;

5. Passage of the By-law within three months after holding the poll.

Failing these or any of them, the By-law may be held invalid. (See note *g* to sec. 231.)

(*b*) See notes *i* and *j* to sec. 231.

(*c*) See note *o* to sec. 231.

(*d*) See note *a* to sec. 128.

(*e*) The municipal year begins in January, and so far corresponds with the calendar year. If a By-law is rejected at any time in one year, it cannot be again submitted until the year following.

(*f*) The course of proceeding indicated appears to be the following:

1. If there be a Gas or Water Company incorporated in the Municipality, the Council of the Municipality, before levying a gas or water rate, is by By-law to fix a price to be offered for the works or stock of the Company;

2. The Company, within thirty days after communication of a notice of a price, is either to accept the same or to proceed to arbitration;

3. If the sum be either accepted, or a different sum awarded, the Municipality, before levying the rate, is required to pay or secure that sum.

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a price to offer for the works or stock of the Company; nor until thirty days have elapsed after notice of such price has been communicated to the Company without the Company's having accepted the same, or having, under the provisions of this Act as to arbitrators, named and given notice of an arbitrator to determine the price, nor until the price accepted or awarded has been paid, or has been secured to the satisfaction of the Company. 29-30 V. c. 51, s. 300, sub. 7.

Proviso as to provisions in special Acts.

**389.** The foregoing clauses, or any of them, shall not be construed to apply to or affect the provisions contained in any special Act obtained or to be obtained by any Company or Municipal Corporation. (*g*)

DIVISION VII.—POWERS OF COUNCILS OF TOWNSHIPS, TOWNS AND INCORPORATED VILLAGES.

By-laws may be made for—

**390.** The Council of every Township, Town and Incorporated Village (*h*) may also pass By-laws:

*Commutation of Statute Labour.*

Voluntary commutation of statute labour.

(1.) For empowering any person (resident or non-resident) liable to statute labour within the Municipality, to compound for such labour, (*i*) for any term not exceeding five years, at any sum not exceeding one dollar for each day's labour;

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(*g*) A general enactment does not usually derogate from or interfere with the provisions of a special Act of Parliament. (See note c to sec. 1.)

(*h*) *Counties* not included.

(*i*) No person in Her Majesty's Naval or Military Service, on full pay or on actual service, is liable to perform statute labour or to commute therefor. Nor shall any commissioned officer or private of the Volunteer Force, certified by the District Staff Officer as an efficient volunteer; but this does not extend to any volunteer who may be assessed for property. (Assessment Act, 1868, sec. 79.) Every other male inhabitant of a City, Town or Village, of the age of 21 years and upwards, and under 60 years of age (and not otherwise exempted by law from performing statute labour), who has not been assessed upon the Assessment Roll of the City, Town or Village, or whose taxes do not amount to two dollars, must, instead of statute labour, be taxed two dollars yearly therefor, to be levied and collected at such time, by such person and in such manner as the Council of the Municipality shall by By-law direct. (*Ib.* sec. 80.) No person is exempt from the tax by reason of his producing a certificate of his having performed statute labour or paid the tax elsewhere, unless he was actually domiciled out of the limits of the City, Town or Village, at the time he so performed statute labour or paid the tax. (*Ib.* sec. 81.) But a proprietor of land cannot be compelled actually to do statute labour in a Township, unless himself a resident of such Township (*Moore* v. *Jarron*, 9 U. C. Q. B. 233), and the power to pass By-laws for enforcing performance of statute labour only applies to those

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(2.) For providing that a sum of money, not exceeding one dollar for each day's labour, may, or shall be paid in commutation of such statute labour; (*k*) Compulsory commutation.

*Increasing or Reducing Amount.*

(3.) For increasing or reducing the number of days' labour to which the persons rated on the Assessment Roll or otherwise shall be liable, in proportion to the statute labour to which such persons are, in respect of the amounts at which they are assessed or otherwise, respectively liable; (*l*) Fixing number of days' statute labour.

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cases where the burthen legally exists. (*In re Dickson and Galt*, 9 U. C. Q. B. 257.) Non-resident proprietors are, however, clearly subject to assessment for commutation for statute labour. A non-resident who has not required his name to be entered on the Roll is not entitled to be admitted to perform statute labour in respect of land owned by him. (See Assessment Act, sec. 88.) But a commutation tax must be charged against every separate lot or parcel according to its assessed value. (*Ib.*) In case any non-resident proprietor whose name has been entered on the Assessment Roll, does not perform his statute labour or pay commutation for the same, the Overseer of Highways in whose division he is placed must return him as a defaulter to the Clerk of the Municipality before the 15th August, and the Clerk must in that case enter the commutation for statute labour against his name in the Collector's Boll. (*Ib.* sec. 89.)

(*k*) The power, by the preceding subsection, is to compound "for any term not exceeding five years." This subsection applies to the amount of commutation money for each day's statute labour, in respect of the period for which the commutation is made. The power is by By-law to provide that a sum of money not exceeding one dollar for each day's statute labour may or shall be paid in respect of such statute labour. There is no power to fix the amount of commutation at a higher rate than one dollar per day. (See *In re Tilt and Toronto*, 13 U. C. Q. B. 447.) The sum so fixed must apply equally to residents who are subject to statute labour and to non-residents in respect of their property. (Assessment Act, sec. 85.) Where the Council of any Township by By-law directs that a sum not exceeding one dollar per day shall be paid as commutation for statute labour, the commutation tax may be added in a separate column in the Collector's Roll, and collected and accounted for like other taxes. (*Ib.* sec. 84.) Where no such By-law has been passed, the statute labour in Townships, Towns or Villages, in respect of lands of non-residents, must be commuted at the rate of fifty cents for each day's labour. (*Ib.* sec. 86; as amended by 34 Vic. cap. 28, s. 3.) No By-law is necessary unless the Municipality desire to fix the commutation money at a higher rate than fifty cents a day. (*Robinson* v. *Stratford*, 23 U. C. Q. B. 99.)

(*l*) Every male inhabitant of a Township, between the ages of twenty-one and sixty, who is not otherwise exempt to any amount (and who is not exempt by law from performing statute labour), is liable to at least one day of statute labour on the roads and highways

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*Enforcing.*

Enforcing statute labour.

(4.) For enforcing the performance of statute labour, or payment of a commutation in money in lieu thereof, when not otherwise provided by law; (*m*)

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in the Township. (Assessment Act, sec. 82.) And no Council has power to reduce statute labour required under the last-mentioned section (*Ib.*); and every person assessed upon the Assessment Roll of a Township in respect of property is, if his property is assessed at not more than $300, liable to two days' statute labour.

| | | | | | |
|---|---|---|---|---|---|
| At more than $300, | but not more than | $500 | ..... | 3 | days. |
| Do. | 500, | do. | do. 700 ..... | 4 | " |
| Do. | 700, | do. | do. 900 ..... | 5 | " |

And for every $300 over $900, or any fractional part over $150, one additional day. But the Council of any Township has power, by a By-law operating generally and ratably, to reduce or increase the number of days of statute labour to which all the parties rated on the Assessment Roll or otherwise are respectively liable, so that the number of days' labour to which each person is liable shall be in proportion to the amount at which he is assessed. (*Ib.* sec. 83.) In Townships where farm lots have been subdivided into park or village lots, and the owners are not resident and have not required their names to be entered on the Assessment Roll, the statute labour must be commuted by the Township Clerk in making out the list required by the ninety-second section of the Assessment Act, when such lots are under the value of $200, to a rate not exceeding one-half per cent. in the valuation; but the Council may direct a less sum to be imposed by a general By-law affecting such lots. (*Ib.*)

(*m*) Any person liable to pay the sum named in the eightieth section of the Assessment Act, must pay the same to the Collector within two days after demand thereof. In case of neglect or refusal to pay the same, the Collector may levy the same by distress. If no sufficient distress can be found, then upon summary conviction, before a Justice of the Peace of the County in which the local Municipality is situate, of his refusal or neglect to pay the said sum and of there being no sufficient distress, he incurs a penalty of five dollars with costs; and in default of payment at such time as the convicting Justice shall order, shall be committed to the common gaol of the County, and be there put to hard labour for any period not exceeding ten days, unless such penalty and costs, and the costs of the warrant of commitment and of conveying the said person to gaol, be sooner paid. (Assessment Act, sec. 87.) And any person liable to perform statute labour, under section 82 of the Act, not commuted, is required to perform the same when required to do so by the pathmaster or other officer of the Municipality appointed for the purpose; and in case of wilful neglect or refusal to perform such statute labour after six days' notice requiring him to do the same, shall incur a penalty of five dollars, and upon summary conviction before any Justice of the Peace, such Justice shall order the same, together with the costs of prosecution and distress, to be levied by distress of the offender's goods and chattels; and in case there shall be no sufficient distress, such offender may be committed to the common gaol of the County, and there put to hard labour for any

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(5.) For regulating the manner and the divisions in which statute labour or commutation money shall be performed or expended; (*n*) 29-30 V. c. 51, s. 332, sub. 1–5. Regulating performance, &c.

*Tavern and Shop Licenses.*

(6.) Respecting shop and tavern licenses, and regulating the sale of spirituous, fermented or other manufactured liquors, and the appointment of Inspectors of Licenses, as authorized (*o*) by the Act respecting Tavern and Shop Licenses, Regulating shop and tavern licenses, and sale of spirits, &c.

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time not exceeding ten days, unless such penalty and costs, and the costs of the warrant of commitment and of conveying the person to gaol, shall be sooner paid. (*Ib.*) All sums and penalties recovered under the last section must be paid to the Treasurer of the local Municipality, and form part of the statute labour fund thereof. (*Ib.*) The warrant may, it seems, issue for imprisonment without first summoning the defaulter to answer, or making a formal conviction. (*The Queen* v. *Morris*, 21 U. C. Q. B. 392; but see note *l* to sub. 43 of sec. 384.) A By-law directing that the Overseers of Highways should bring any person refusing or neglecting to perform statute labour before the Reeve of the Municipality or nearest Justice of the Peace, who, upon conviction, should impose a fine of five shillings for each day's neglect, with costs, and adjudge that the payment of such fine should not relieve the person fined from the performance of the labour, was held good. (*In re Stoddart and Wilberforce, Grattan and Fraser*, 15 U. C. Q. B. 163.) So a By-law enacting that any person liable to perform statute labour, who after being duly notified should neglect or refuse to attend, should forfeit or pay five shillings for every day he should neglect or refuse, and that the payment of such fine should release such person from the performance of statute labour, was held good. (*In re Bannerman and Yarmouth*, 15 U. C. Q. B. 14.)

(*n*) The power to regulate the divisions implies a power to make divisions, to which is added a power to regulate the manner in which the labour shall be performed or the commutation money expended in each division. A party to save himself from fine must perform, when called upon, his statute labour within the division of the Township in which he resides. (*Gates* v. *Devenish*, 6 U. C. Q. B. 260.)

(*o*) The power of a Municipal Corporation to pass By-laws regulating the sale of spirituous, fermented or other manufactured liquors is of course subject to the control of the Legislature. (See note *d* to sub. 14 of sec. 372.) Here the power is conferred as authorized by 32 Vic. cap. 32, Ont., as amended by 33 Vic. cap. 28, Ont., and any amendments thereto. These statutes were, during last session of the Ontario Legislature, amended and consolidated. (37 Vic. cap. 32.) A prohibition in a By-law against selling liquor without license was, in the absence of express legislation, held not to apply to manufacturers. (*St. Paul* v. *Troyer*, 3 Minn. 291.) If a license to sell spirituous liquors be granted where it ought not to have been granted, the remedy is not by mandamus to compel its revocation. (*The Queen* v. *Burnside*, 8 U. C. Q. B. 263.) The Court has refused to compel a License Inspector to examine the house of the applicant with a view to a license. (*In re Baxter and Hesson*, 12 U. C. Q. B. 139.)



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being the Act passed in the thirty-second year of Her Majesty's reign chaptered thirty-two, and the Act passed in the thirty-third year of Her Majesty's reign chaptered twenty-eight, and any amendments thereto. 32 V. c. 32; 33 V. c. 28.

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A clause in a By-law of a Municipal Corporation which cancelled the license of a person convicted of a penalty for the infringement of a By-law, was held to be in excess of the powers of a Municipal Corporation. (*In re Bright and Toronto*, 12 U. C. C. P. 433; see also *In re Smith and Toronto*, 10 U. C. C. P. 225.) There is no right to license *particular persons by name*. (*In re Coyne and Dunwich*, 9 U. C. Q. B. 448; but see *In re Terry and Haldimand*, 15 U. C. Q. B. 380.) A By-law in reality granting a monopoly to a few persons is illegal. (*In re Barclay and Darlington*, 12 U. C. Q. B. 86; *In re Graystock and Otawatee*, *Ib.* 458; *In re Baker and Paris*, 10 U. C. Q. B. 621; *In re Barclay* v. *Darlington*, 11 U. C. Q. B. 470.) Power is by this Act given to pass By-laws preventing the sale of intoxicating drink to a child, apprentice or servant, without the consent of a parent, master or legal protector (sec. 379, sub. 31), or to idiots or insane persons. A By-law prohibiting the sale to all persons, not excepting travellers, was held invalid. (*In re Ross and York and Peel*, 14 U. C. C. P. 171.) A By-law enacting that the bar-room of every hotel, &c., should be closed on every Monday, Tuesday, Wednesday, Thursday and Friday night at twelve o'clock, and should remain closed till five o'clock on the morning following each of such days respectively, was held good. (*In re Bright and Toronto*, 12 U. C. C. P. 433.) In England it has been held that an innkeeper is justified in supplying liquor to a person on a journey, though the object of the journey is pleasure (*Atkinson* v. *Sellers*, 5 C. B. N. S. 442), and that whether such person be walking or driving. (*Taylor* v. *Humphries*, 17 C. B. N. S. 539; *Peplow* v. *Richardson*, L. R. 4 C. P. 168.) So if supplied to a person waiting for a railway train. (*Fisher* v. *Howard*, 11 L. T. N. S. 373.) If the innkeeper ask the person if he is a traveller and receive an affirmative answer, he is justified in acting in good faith on such answer. (*The King* v. *Ivens*, 7 C. & P. 213.) The onus of proving an excuse was, before the English Licensing Act, 1872, on the complainant. (*Tennant* v. *Cumberland*, 1 E. & E. 401; *Atkinson* v. *Sellers*, 5 C. B. 446; *Taylor* v. *Humphries*, 17 C. B. N. S. 539; *Peache* v. *Coleman*, 6 L. R. 1 C. P. 324; *Davis* v. *Scrase*, 19 L. T. N. S. 789; s. c., L. R. 4 C. P. 172.) The onus of proof is apparently shifted under the English Licensing Act, 35 & 36 Vic. cap. 96. (See *Roberts* v. *Humphreys*, L. R. 8 Q. B. 483.) A gratuitous giving of spirituous liquor by an innkeeper to his guests is not a sale thereof. (*Overton* v. *Hunter*, 1 L. T. N. S. 366.) So if there be a gift to anybody else. (*Petherick* v. *Sargent*, 6 L. T. N. S. 48.) The charge in a conviction for selling liquors without a license must be certain, and so stated as to be pleadable in the event of a second prosecution for the same offence (*The Queen* v. *Hoggard*, 30 U. C. Q. B. 152); but it need not mention the statute under which the conviction took place, nor to whom the liquor was sold. (*The Queen* v. *Faulkner*, 26 U. C. Q. B. 529; *The Queen* v. *Strachan*, 20 U. C. C. P. 182.) It is a conspiracy at common law for two or more persons to act in concert in unlawful measures to procure a violation of a liquor law with a view to the recovery of penalties. (*Commonwealth* v. *Leeds*, 8 U. C. L. J. N. S. 216.)

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DIVISION VIII. — POWERS OF COUNCILS OF TOWNS AND INCORPORATED VILLAGES.

**391.** The Council of every Town and Incorporated Village (*p*) may pass By-laws: By-laws may be made for—

(1.) For regulating and licensing the owners of livery stables, and of horses, cabs, carriages, omnibuses and other vehicles used for hire; (*q*) for establishing the rates of fares to be taken by the owners or drivers, (*r*) and for enforcing payment thereof. (*s*) 29-30 V. c. 51, s. 296, sub. 31; *vide* 31 V. c. 30, s. 33. Regulating and licensing livery stables, cabs, &c.

DIVISION IX.—EXCLUSIVE POWERS OF COUNCILS OF COUNTIES.

**392.** The Council of every County (*t*) may make By-laws: By-laws may be made for—

*Protecting Booms.*

(1.) For protecting and regulating of booms on any stream or river, for the safe-keeping of timber, saw-logs and staves, within the Municipality. (*u*) 29-30 V. c. 51, s. 344, sub. 4. Protecting booms.

*Board of Audit, Criminal Justice, &c.*

**393.** Every County Council shall appoint, at its first meeting in each year, two persons, not more than one of County boards of audit.

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But it is not indictable at common law to compound a prosecution for such an offence, where the same is triable before a Justice of the Peace. (*The Queen* v. *Mason*, 17 U. C. C. P. 534.) It is the duty of the Council of every County, Township, Town and Incorporated Village, and of the Commissioners of Police in each City, in the month of February in each year, to appoint an officer or officers for the Municipality to enforce the observance of the Tavern and Shop Licenses Acts, and for the observance and enforcement of any By-law of the Municipality with respect to Tavern and Shop Licenses, and to fix and define the duties, powers and privileges of the officer or officers so appointed, the remuneration he or they shall receive, and the security to be given for the efficient discharge of the duties of the office. (Stat. 37 Vic. cap. 32, s. 54.)

(*p*) Commissioners of Police in Cities have similar powers to those here conferred upon Councils of Towns and Incorporated Villages. (See sec. 335.)

(*q*) See note *k* to sec. 335.

(*r*) See note *l* to same.

(*s*) See note *m* to same.

(*t*) Restricted to *Counties*.

(*u*) The right to float timber, saw-logs and staves over rivers and other streams, is an ordinary right of navigation, and is recognized by statute. (See *Little* v. *Ince et al*, 3 U. C. C. P. 528.) Such timber is usually for the time kept in booms, and the protection and regulation of booms becomes therefore a matter of municipal concern.

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whom shall belong to such Council, to be members of the Board of Audit, (*a*) for auditing and approving accounts and demands preferred against the County, the approving and auditing whereof, previous to the 19th day of December, 1868, belonged to the "General Sessions." 32 V. c. 6, s. 9, sub. 2; 33 V. c. 8, s. 2.

Payment of members of board.

**394.** The Council may pay the persons appointed by them to serve on the said Board of Audit, any sum not exceeding two dollars each per day for their attendance at such audit, (*b*) and five cents for each mile necessarily travelled in respect thereof, in going to and from such audit. 33 V. c. 8, s. 3.

*Livery Horses, &c.*

Regulating and licensing livery stables, &c.

**395.** The Council of every County having County gravel or macadamized roads within its jurisdiction and under its immediate control, such roads being kept up and repaired by municipal taxation, and upon which no toll is collected, (*c*) shall have power to pass a By-law or By-laws authorizing the regulating and licensing of the owners of livery stables, and of horses, cabs, carriages, omnibuses, and all other vehicles used or kept for hire; (*d*) and for issuing and regulating

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(*a*) It would be very inconvenient for the Council to pay the accounts mentioned in this section to the several officers before audit by the Government auditors, and final allowance by the Government; for then occasions might be constantly arising for reclaiming from the officers any sums that the Government County Auditors or the Provincial Treasurer may have rejected. (*Per* Robinson, C. J., in *Lambton* v. *Possett*, 21 U. C. Q. B. 472, 484; s. c., 22 U. C. Q. B. 412; see also *In re Davidson and Quarter Sessions*, 24 U. C. Q. B. 66; *In re Dartnell and Quarter Sessions*, 26 U. C. Q. B. 490; *In re Treasurer, &c., of Lincoln*, 34 U. C. Q. B. 1.)

(*b*) As to compensation of public officers, see note *t* to sec. 219.

(*c*) This section does not extend to the Council of every County. It is restricted to a County "having County gravel or macadamized roads within its jurisdiction *and* under its immediate control, such roads being kept up and repaired by Municipal taxation, *and* upon which no toll is collected."

(*d*) The powers conferred are for—

1. Regulating and licensing of the owners of livery stables, and of horses, cabs, carriages, omnibuses, and all other vehicles used or kept for hire;
2. Issuing and regulating teamsters' licenses;
3. Regulating the width of tire used on such vehicles;
4. Establishing the rate of fare that may be collected or taken by the owners or drivers;
5. Enforcing the payment of such licenses;
6. Regulating rates of fares for the conveyance of goods or passengers;

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teamsters' licenses; (*e*) for regulating the width of tire used on such vehicles; (*f*) for establishing the rates of fare that may be collected or taken by the owners or drivers; (*g*) for enforcing the payment of such licenses; (*h*) regulating rates of fares for the conveyance of goods or passengers; and for enforcing the width of tire that may be used on such vehicles, when travelling on the aforesaid County gravel or macadamized roads. (*j*) 31 V. c. 30, s. 45.

Wheels.

Rates of fare.

*Horse Thieves.*

**396.** The Council of every County shall provide by By-law, that a sum not less than twenty dollars shall be payable as a reward to any person or persons who shall pursue and apprehend, or cause to be apprehended, any person or persons guilty of stealing any horse or mare within the said County, (*k*) and such reward shall be paid out of the funds

Reward for apprehension of persons guilty of horse stealing.

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7. Enforcing the width of tire, &c.
See note *k* to sec. 335.

(*e*) It is presumed teamsters teaming for hire only are here intended. (See note *k* to sec. 335.)

(*f*) See sub. 54 to sec. 384, and notes thereto.

(*g*) See note *l* to sec. 335.

(*h*) See note *m* to sec. 335.

(*j*) See note *m* to sec. 335.

(*k*) One of the objects of Municipal government is the protection of property. In furtherance of this object, it has been held in some of the States of the Union that a Municipal Corporation may offer a reward for the detection of offenders against the property of another. Thus in cases of arson. (*York* v. *Forscht*, 23 Pa. St. 391; *Crawshaw* v. *Roxbury*, 7 Gray, 374.) But in other States the power to offer rewards for the detection of criminals, in the absence of express legislation, has been denied. (*Gale* v. *South Berwick*, 51 Me. 174; see also *Lee* v. *Flemingsburg*, 7 Dana. (Ky.) 28.) The power in this section is restricted to rewards for the pursuit and apprehension of a person or persons guilty of stealing any horse or mare within the County. The reward is not to be "*less* than twenty dollars." This is the minimum; so the Council may make the reward as much more as they think reasonable. The reward is to be payable to the person "who shall pursue and apprehend," or "cause to be apprehended," the guilty person. It is only to be paid on conviction of the thief, and on the order of the Judge before whom the conviction is obtained. Any person performing the service, who, without such reward, is not bound to perform the service, and placing himself in the position described by the statute, may sue in any Court of competent jurisdiction for the amount of the reward. (See note *l*, p. 390.) If it were the duty of the person who made the arrest to have pursued and arrested him without any reward, he cannot recover, for, so far as he is concerned, it is a promise without consideration. (See *Stotesbury* v. *Smith*, 2 Burr. 924; *Stilk* v. *Myrick*, 2 Camp. 317; *Harris* v. *Watson*, Peake, 72; *Bridge* v. *Cage*, Cro. Jac. 103.) It has therefore

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of the Corporation, on conviction of the thief, on the order of the Judge before whom the conviction is obtained. (*l*) 29-30 V. c. 51, s. 355, sub. 26.

*Improvements by either County of a Union.*

Enabling either county of a union to make improvements therein.

**397.** The Councils of United Counties may make appropriations and raise funds to enable either County separately to carry on such improvements as may be required by the inhabitants thereof. (*m*) 29-30 V. c. 51, s. 290.

Reeves, &c., of the county interested alone to vote.

**398.** Whenever any such measure is brought under the notice of the Council of any United Counties, none but the

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been held that a watchman, who, while in the discharge of his duty as such, discovers a person in the act of committing the crime of arson, cannot recover the reward offered. (*Pool* v. *Boston*, 5 Cush. 219; *Gilmore* v. *Lewis*, 12 Ohio, 281; *Means* v. *Hendershott*, 24 Iowa, 78.) But where three persons broke gaol, and immediately after their escape the defendant, who was Sheriff, offered a general reward of one hundred dollars for the capture of each prisoner, it was held that the Deputy Sheriff, having succeeded in capturing two of the fugitives, was entitled to two hundred dollars. (*Davis* v. *Munson*, 43 Vt. 677; "Upon the facts as detailed, the plaintiff had authority to arrest these prisoners without process and as a Peace officer. It would, in a general sense, have been his duty to do so if they had been pointed out to him under circumstances to assure him of their identity and to lead him to apprehend reasonable danger of losing them if he waited for process. But the fact that he had this authority and was under this general duty did not put him, having no process in hand, under any specific legal obligation to look them up. . . . . The plaintiff, being under no specific official obligation to enter upon the detective service, for which he would not legally be entitled to pay from the State, he is clearly a person who might engage in it in reliance upon the offer of this reward," &c. (*Per* Steele, J., *Ib.*)

(*l*) The power to pay is *conditional*—

1. On conviction of the thief;

2. On the order of the Judge before whom the conviction is obtained.

The plaintiff must in general prove performance according to the terms of the advertisement. (See *Neville* v. *Kelly*, 12 C. B. N. S. 740; *Smith* v. *Moore*, 1 C. B. 438; *Thatcher* v. *England*, 3 C. B. 254; *England* v. *Davidson*, 11 A. & E. 856; *Lancaster* v. *Walsh*, 4 M. & W. 16; *Fallick* v. *Barber*, 1 M. & S. 108; *Williams* v. *Carwardine*, 4 B. & Ad. 621; *Tarner* v. *Walker*, L. R. 1 Q. B. 641; s. c. L. R. 2 Q. B. 301; see further, *Janvrin* v. *Exeter*, 48 N. H. 16; *Codding* v. *Mansfield*, 7 Gray, 272.)

(*m*) The general rule is, that during the union of Counties all laws applicable to Counties shall apply to the Union as if the same formed but one County. (Sec. 33.) The exceptions made by the statute are as to representation in Parliament and registration of titles. (*Ib.*) The power for either County separately to carry on inprovements is a further exception to the general rule.

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Reeves and Deputy Reeves of the County to be affected by the measure shall vote; (*n*) except in case of an equality of votes, when the Warden, whether a Reeve or Deputy Reeve of any portion of the County to be affected by the measure or not, shall have the casting vote. (*o*) 29-30 V. c. 51, s. 291. Exception.

**399.** In all other respects, all the provisions of this Act giving such privileges and making provision for the payment of the amounts appropriated, whether to be borrowed upon a loan or to raised by direct taxation, shall be adhered to. (*p*) 29-30 V. c. 51, s. 292. Provisions of this Act for repayment to apply.

**400.** The Treasurer of the United Counties shall pay over all sums so raised and paid into his hands by the several Collectors, without any deduction or percentage. (*q*) 29-30 V. c. 51, s. 293. Treasurer to pay over moneys without deduction.

**401.** The property to be assessed for the purposes contemplated in the four last preceding sections of this Act, shall be the same as the property assessed for any other County purpose, except that any sum to be raised for the purposes of one County only, or for the payment of any debt contracted for the purposes of one County only, shall be assessed and levied solely upon property assessed in that County, and not upon property in any other County united with it; (*r*) and any debenture that may be issued for such purposes may be issued as the debenture of the said one County only, and shall be as valid and binding upon that County as if that County were a separate Municipality, but such debenture shall be under the seal of the United Counties, and be signed by the Warden thereof. (*s*) 29-30 V. c. 51, s. 294. The property to be assessed in such cases.

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(*n*) The improvements must be such as are required by the inhabitants of one of the United Counties. The desire for them may be signified to the Council of the United Counties by the Reeves, &c., of the County to be affected. When brought before the notice of the Council, composed as it will be of Reeves and Deputy Reeves of the United Counties, none except the Reeves and Deputy Reeves of the County to be affected by the measure are to vote.

(*o*) See note *k* to sec. 122.

(*p*) See sec. 258, *et seq.*

(*q*) It is not said to whom the Treasurer is to "pay over;" but it is apprehended only to persons directly entitled to receive, such as contractors, &c., for work done.

(*r*) *i. e.* "on the *whole* ratable property *in the County.*" (See note *g* to sec. 258.)

(*s*) It is not easy to understand this part of the section. Is it intended that the promise to pay shall be that of the one County

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DIVISION X.—POWERS OF TOWNSHIPS.

By-laws may be made for—

**402.** The Council of every Township (*t*) may pass By-laws:

*Obstructions to Streams and Water-courses.*

Preventing obstruction of streams, &c.

(1.) For preventing the obstruction of streams, creeks and water-courses, (*u*) by trees, brushwood, timber, or other materials, and for clearing away and removing such obstructions at the expense of the offenders or otherwise;

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only? The difficulty is that, until separation, there is no corporate body capable of promising or making a contract. The provision that any debenture that may be issued may be issued "as the debenture of the one County only," and shall be as valid and binding upon that County "as if that County were a separate Municipality," would appear to indicate the affirmative of the proposition. But the concluding provision, that such debenture "shall be under the seal of the *United Counties*, and be signed by the Warden *thereof*," is apparently inconsistent with such a conclusion.

(*t*) Restricted to *Townships* only.

(*u*) According to the civil law which pervaded the Province of Quebec until the division thereof in 1792, all rivers were distinguished as public and private. Such rivers were called public rivers which maintained a perpetual stream and were capable of being navigated; and an express interdict was made that nothing should be placed in a public stream whereby the navigation might be prejudiced. The civilians held that a stream might acquire the denomination of river either by its magnitude or by the common acceptation of the neighbourhood. A river was distinguished from a common current occasioned by land floods, because one had always a constant stream, regularly confined within banks, and the other might be casual and temporary, flowing over a level. A temporary innundation by floods was not accounted to deserve the appellation of a river, or to alter the original private nature of the soil. Wherever a public stream flowed, though it were through a private channel artificially made, yet it constituted that place public; but on the other hand, if the stream ceased to flow over it, then it became again private. (*Per* Macaulay, C.J., in *The Queen* v. *Meyers*, 3 U. C. C. P. 305–317.)

In England there seem to be at common law three descriptions of rivers or water-courses:

1. Navigable rivers, technically so termed (see note *m* to sec. 413);

2. Rivers not navigable in law, but so in fact; and though private in relation to the ownership of the soil, yet public highways in relation to the use of the water;

3. Private rivers strictly so called. (*Per* Macaulay, C. J., *Ib.* 318.)

The powers under this section are for preventing the obstruction of "streams, creeks and water-courses," and would appear to apply to all the foregoing streams. A person having mills partly on a road allowance and partly on a public river, was held not to have such an interest in the river as to be entitled to complain of an obstruction in it. (*Giles* v. *Campbell*, 19 Grant. 226.)

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(2.) For levying the amount of such expense in the same manner as taxes are levied; (*v*) Levying expenses.

(3.) For imposing penalties on parties causing such obstructions. (*w*) 29-30 V. c. 51, s. 280. Penalties.

**403.** Whenever any stream or creek in any Township (*x*) is cleared of all logs, brush or other obstructions to the town line between such Township and any adjoining Township into which such stream or creek flows, the Council of the Township in which the creek or stream has been cleared of obstruction may serve a notice in writing on the head of the Council of the adjoining Township into which the stream or creek flows, requesting such Council to clear such stream or creek through their Municipality; (*y*) and it shall be the duty of such last named Council, within six months after the service of the notice as aforesaid, to enforce the removal of all obstructions in such creek or stream within their Municipality, to the satisfaction of any person whom the Council of the County in which the Municipality whose Council served the notice is situate, shall appoint to inspect the same. (*z*) 34 V. c. 30, s. 14. When stream in any township cleared of obstructions, notice may be served on council of adjoining municipality through which stream runs, requiring them to remove obstructions within their municipality.

## Division XI.—Powers and Duties of Councils as to Highways and Bridges.

### *Highways Defined.*

**404.** All allowances made for roads by the Crown Surveyors in any Town, Township or place already laid out, or What shall constitute public highways.

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(*v*) Taxes are ordinarily levied by means of the Collector's Roll. If intended that the expense of removing obstructions under this subsection shall be so levied, it would be necessary for the Collector, when making up his Roll, to place the amount of such expense opposite the name of the party liable.

(*w*) See sec. 372, sub. 13, and notes thereto.

(*x*) *Any* stream, &c. (See note *u* to sec. 402.)

(*y*) The previous section relates only to the removal of obstructions from a stream *within* a Township; but where the stream flows into an adjoining Township, so that it may be said to be the joint interest of both townships to have the stream cleared of obstruction, provision is made for the clearing of the stream through the second Municipality.

(*z*) This involves the appointment by the County Council of an Inspector. The work is to be done to his satisfaction. No provision is, in express terms, made for enforcing the duty here cast upon the second Township. Mandamus probably would be the proper remedy to enforce the performance of such a duty.

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hereafter laid out; (*a*) and also all roads laid out by virtue of any statute, or any roads whereon the public money has

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(*a*) The following are to be deemed common and public highways under the operation of this section, the origin of which is sec. 12 of Stat. U. C. 50 Geo. III. cap. 1:

1. All allowances for roads made by the Crown Surveyors, &c.;
2. All roads laid out by virtue of any statute;
3. All roads whereon the public money has been expended for opening the same;
4. All roads on which statute labour hath been usually performed;
5. All roads passing through the Indian lands;
6. The exception is where such roads have been already altered or may hereafter be altered according to law.

Before the passing of the 50 Geo. III. cap. 1, the Crown was not restricted from altering the original plan of a Township, although already laid out previous to making grants of lots of land therein. In the original survey, allowances for roads were of course made; and if afterwards the lots were located, described and granted in conformity thereto, it would be inferred that the allowances so made were dedicated by the Crown as public roads; but if, after survey, the Government deemed it expedient to abandon or deviate from the principles of it in the future grant of the Township, no law prevented the exercise of such a right. (See *The King* v. *Allan et al.*, 2 O. S. 90; *Field* v. *Kemp*, 3 O. S. 374.) In this respect the 50 Geo. III. cap. 1, altered the law, and it would now seem that if once a road acquires the legal character of a highway, by reason of the original survey or otherwise, it is out of the power of the Crown, by grant of the soil and freehold thereof to a private person, to deprive the public of their right to use the road. (See *The Queen* v. *The Bishop of Huron*, 8 U. C. C. P. 253; *Mountjoy* v. *The Queen*, 1 E. & A. 429; *The Queen* v. *Hunt*, 16 U. C. C. P. 145; s. c. 17 U. C. C. P. 443.) The enactment under consideration is in some respects clearly prospective as well as retrospective; for its language is, "all allowances *made*, &c., in any Town, Township, &c., *already* laid out, or *hereafter* [to be] laid out, &c." It is said that the fact of a Government Surveyor laying out certain allowances for roads or streets in the plan of the original survey of Crown lands, would be sufficient to give such roads or streets the legal character of highways, though there may have been no stakes planted on the ground to mark them out, and that they would be deemed in law highways before they were actually opened and used, and before statute labour or public money had been expended upon them. (*Per* Robinson, C. J., in *The Queen* v. *Great Western Railway Company*, 21 U. C. Q. B. 577; see also *The Queen* v. *Hunt*, 16 U. C. C. P. 145; s. c., 17 U. C. C. P. 443.) The fact of a Crown Surveyor having laid out a road on the plan of the original survey makes it a highway, unless there be work on the ground clearly inconsistent with the plan. (*Carrick* v. *Johnston*, 26 U. C. Q. B. 69.) But where there is work on the ground, it must govern. (*Ib.*) Where roads, commonly called trespass roads, in unsettled parts of the country, are used, across the land of private persons, owing to the original allowances not being opened, when the allowances in process of time become opened, the right to exclusive possession of the trespass roads would appear to vest in the proprietors of the soil. (See *Borrowman* v. *Mitchell*, 2 U. C. Q. B. 155; *Dawes* v. *Hawkins*, 4 L. T. N. S. 288;

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been expended for opening the same, (*b*) or whereon the statute labour hath been usually performed, (*c*) or any roads passing through the Indian lands, (*d*) shall be deemed common and public highways, (*e*) unless where such roads have been already altered or may hereafter be altered according to law. (*f*) 29-30 V. c. 51, s. 315.

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*The Queen* v. *Plunkett*, 21 U. C. Q. B. 536.) But where a highway has been surveyed, and a road constructed which was intended to be on the line so surveyed, if the road be found to differ from the true astronomical line mentioned as its course on the original survey, it does not follow that the owner of the freehold is entitled to possession of the part erroneously travelled, especially if user for many years be shown, and considerable expenditure of public money. *Prouse* v. *Glenny et al.*, 13 U. C. C. P. 560.) Roads running hither and thither, without a defined course or definite boundaries, are not to be deemed common and public highways. (*Schwinge* v. *Dowell*, 2 F. & F. 845; *Chapman* v. *Cripps*, *Ib.* 864.) All such cases should be dealt with in a liberal spirit, with a due regard to the customs and necessities of a new country, where roads are in their infancy and much land unenclosed. (*Per* Hagarty, C. J., in *Moore* v. *Esquesing*, 21 U. C. C. P. 277-281.) On an application for a mandamus to open an alleged highway, the Court will require strict proof of the origin of the highway. (*Re Lawrence and Thurlow*, 33 U. C. Q. B. 223.)

(*b*) Public money may mean the money of the Government, or the money of the local Municipal Corporation. Either, it is apprehended, would be public money within the meaning of this section. But it must be shown that such money was lawfully expended, and expended for opening the road. (*The Queen* v. *Hall*, 17 U. C. C. P. 282.)

(*c*) It must be shown that statute labour was *usually* performed on the road. Where a witness stated that "being Pathmaster for two years some years since, he directed statute labour to be performed on the road, besides expending money of his own in improving it," it was held that the proof came very far short of what the statute requires. (*The Queen* v. *Plunkett*, 21 U. C. Q. B. 536-541.)

(*d*) "*Any* roads passing through *the* Indian lands" is very indefinite language. So far there has not been any case decided as to its meaning.

(*e*) "Shall be *deemed* common and public highways." These words have been read as if they were "shall be *presumed* to be common and public highways." In this view inquiry may be had as to the origin of the road, and if the facts repel the presumption, the road will not be held to be a common and public highway. (*The Queen* v. *Great Western Railway Co.*, 32 U. C. Q. B. 506-517.)

(*f*) Where it was shown that the road was only travelled as a temporary substitute for the proper allowance which ran near by, and the latter was afterwards opened, the Court inclined to think that the former might, within the spirit of this clause, be fairly said to have been altered when the public allowance was opened, for which it had for mere convenience been substituted. (*The Queen* v. *Plunkett*, 21 U. C. Q. B. 536.)

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*Freehold in the Crown.*

Certain highways, &c., vested in the Crown.

**405.** Unless otherwise provided for, the soil and freehold (*g*) of every highway or road, altered, amended or laid out according to law, shall be vested in Her Majesty, her heirs and successors. 29-30 V. c. 51, s. 316.

*Jurisdiction in Councils.*

Jurisdiction of councils over roads, &c.

**406.** Subject to the exceptions and provisions hereinafter contained, every Municipal Council shall have jurisdiction over the original allowances for roads and highways and bridges within the Municipality. (*h*) 29-30 V. c. 51, s. 317.

*Possession in Municipality.*

Streets in cities, towns and incorporated villages vested in municipalities subject to certain rights.

**407.** Every public road, street, bridge or other highway, in a City, Township, Town or Incorporated Village, shall be

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(*g*) The soil and freehold of a highway, at common law, remains in the owner of the land. (*Lade* v. *Shepherd*, 2 Str. 1004; *Every* v. *Smith*, 26 L. J. Ex. 344; *Borrowman* v. *Mitchell*, 3 U. C. Q. B. 135; *Dawes* v. *Hawkins*, 4 L. T. N. S. 288; *The Queen* v. *Plunkett*, 21 U. C. Q. B. 536.) By this section it is provided that the soil and freehold of *every* highway or road, altered, amended or laid out according to law, shall be vested in Her Majesty. By section 407, it is provided that *every* public road, street, bridge, or other highway shall be vested in the Municipality, subject to any rights in the soil which the individuals who laid out such road, street, bridge or highway reserved. Between the two there is an apparent inconsistency. This may perhaps be reconciled by reading the section here annotated as applicable to roads laid out by public authority of some kind, and section 407 to roads laid out by private individuals over their own land. (*Per* Burns, J., in *Sarnia* v. *Great Western Railway Co.*, 21 U. C. Q. B. 64; *Mytton et al.* v. *Duck*, 26 U. C. Q. B. 64.) The right of the public in either case is simply to use the road for the purpose of a highway. A user for different purposes, such as excavating soil, &c., would subject the person so using the road to an action of trespass at the suit of the owner of the freehold. (*Cox* v. *Glue*, 5 C. B. 533.) But a plaintiff cannot maintain ejectment for a portion of a public highway. (*Sarnia* v. *Great Western Railway Co.*, 21 U. C. Q. B. 59; *Fitzgibbon* v. *Toronto*, 25 U. C. Q. B. 137.)

(*h*) The control of the public highways has been by the Legislature committed to the Municipal Corporations. They have, subject to the reservations in sections 420 and 421, been entrusted with almost unlimited power of dealing with existing roads and opening new ones. (*Per* Blake, C., in *Attorney-General* v. *Nepean Road Co.*, 2 Grant, 635, 636.) The Corporation of a County is liable to damages for neglect to keep in repair a County road or bridge (*Harrold* v. *Simcoe and Ontario*, 16 U. C. C. P. 43; s. c., in appeal, 18 U. C. C. P. 1; see further, *The Queen* v. *Yorkville*, 22 U. C. C. P. 431), and may maintain an action for an injury wrongfully done to a County road or bridge. (*Wellington* v. *Wilson et al.*, 14 U. C. C. P. 299; s. c., 16 U. C. C. P. 124.)

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vested in the Municipality, (*i*) subject to any rights in the soil which the individuals who laid out such road, street,

(*i*) The declaration is that *every public* road, street, bridge or other highway, in a City, Town or Incorporated Village, shall be *vested* in the Municipality. The word "highway" is here used in its broadest sense, as including all public ways. It is made to include not only public roads, streets and *bridges*, but *other* highways. (See *Fort Edward Plank Road Co.* v. *Payne*, 17 Barb. 567; *Plank Road Co.* v. *Thomas*, 20 Penn. St. 91; *Benedict* v. *Goit*, 3 Barb. 459; *Plank Road Co.* v. *Ramage*, 20 Penn. St. 95; *Plank Road Co.* v. *Rineman*, *Ib.* 99.) It is now settled that the roads of joint-stock companies are not included. (*St. Catharines* v. *Gardner*, 20 U. C. C. P. 107; s. c. in appeal, 21 U. C. C. P. 190; see also *Port Whitby, &c. Road Co.* v. *Whitby*, 18 U.C.Q. B. 40; *The Queen* v. *Brown and Street*, 13 U.C.C.P. 356), unless purchased or otherwise legally acquired by the Municipalities in which situate. (*The Queen* v. *Paris*, 12 U. C. C. P. 445; *The Queen* v. *Louth*, 13 U. C. C. P. 615; see also *Totten* v. *Halligan*, *Ib.* 567.) If any such company permit or allow their road to remain out of repair for the period of nine months after the time fixed by arbitrators for repair of the same, the company shall forfeit all right to their road, and the Municipal Council of the County through which such road or any part thereof passes, may enter upon and take possession of the same, and exercise the same jurisdiction over the same as the road company owning the road were entitled to do under the Joint-stock Companies Act and the amendments thereto. (Stat. 35 Vic. cap. 33, s. 5, sub. 3, Ont.) In case the Municipal Council of the County do not think fit, within the period of one month after the expiration of the nine months, to assume by By-law such road for the purposes of repairing the same and levying tolls thereon, the Municipal Council of any Municipality which would, under the provisions of the Municipal Institutions Act in force in the Province of Ontario, be required to maintain and keep such road in repair as a common and public highway, shall be liable to the same duties as such Municipal Council has or is subject to in respect of the public roads within its jurisdiction. (*Ib.* sub. 4.) Any such company may abandon any portion of their road, and, after such abandonment, the Municipal Council of the Municipality within which such road or any part thereof lies may assume such abandoned portion of such road lying within the Municipality, and have and exercise the same jurisdiction over the same, and be liable to the same duties, as such Council has or is subject to in respect to public roads within its jurisdiction. (29 Vic. cap. 36, s. 9.) So the company may abandon the whole of their road. (Stat. 35 Vic. cap. 33, s. 9.) After such abandonment, the Municipal Council of the County within which the road or any part thereof lies, may assume the abandoned portion of the road lying within the Municipality, and enjoy all the rights, and be subject to all the responsibilities and liabilities, as provided in subsection 3 of section 5 of the Act already mentioned. Failing such action on the part of the County Council, the road becomes subject to the same jurisdiction for the control and repair thereof, as further provided in subsection 4 of section 5 of the Act already mentioned. (*Ib.*) But no such company is entitled to abandon any intermediate portion of their road without the consent of the Municipal Council of the County within which the

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bridge or highway, reserved, (*k*) and except any concession or other road within the City, Township or Town, or Incorporated Village, taken and held possession of by an individual

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portion of road lies, such consent to be expressed by By-law of the Municipal Council. (*Ib.*) So provision is made for the vesting in the Municipalities of joint-stock company roads, after sales thereof to purchasers who make default in putting such roads in a proper state of repair. (See Stats. Ont. 31 Vic. cap. 31, s. 14; 36 Vic. caps. 41 & 42.) Roads or bridges laid out by Government and afterwards abandoned appear to be public roads, under the control of the local Municipalities in whose limits situate. (*Irwin* v. *Bradford*, 22 U. C. C. P. 18; s. c. in appeal, 421.) "Each Municipality, as the law stands, can alone, in my judgment, be made responsible for the maintenance and repair of so much of such a bridge as lies within its borders, as in the case of a road similarly placed, unless where the road or bridge is assumed by the County." (*Per* Vankoughnet, C., in *Harrold* v. *Simcoe and York*, 18 U. C. C. P. 9-16.) A road or bridge may have originated in the convenience or for the protection of individuals, and yet afterwards become of public right a public road or bridge. (*The King* v. *Northampton*, 2 M. & S. 262; *Rossin* v. *Walker*, 6 Grant, 619; *The Queen* v. *Boulton*, 15 U. C. Q. B. 272; *O'Brien* v. *Trenton*, 6 U. C. C. P. 350; *Daniel* v. *North*, 11 East. 375, note; *The Queen* v. *East Mark*, 11 Q. B. 877; *The Queen* v. *Petrie*, 4 E. & B. 737; *Malloch* v. *Anderson*, 4 U. C. Q. B. 481; *The Queen* v. *Spence*, 11 U. C. Q. B. 31; *The Queen* v. *Gordon*, 6 U. C. C. P. 213; *The Queen* v. *Glamorganshire*, 2 East. 356, n.; *The King* v. *West Yorkshire*, 5 Burr. 2594; *The Queen* v. *Yorkville*, 22 U. C. C. P. 431.) Every individual in the community has an equal right to use a public road, street or bridge. The Municipal Corporations cannot be deemed proprietors, and as such entitled to control the possession, any more than any other corporation or person interested in the streets, roads or highways. The property vested in the Municipal Corporations is a qualified one, to be held and exercised for the benefit of the whole body of the Corporation. They hold as trustees for the public, and not by virtue of any title which confers possession sufficient to maintain an action of ejectment (*Per* McLean, J., in *Sarnia* v. *Great Western Railway Co.*, 21 U. C. Q. B. 62); but may, it seems, sue for malicious injuries done to roads or bridges within their jurisdiction. (See *Thurlow* v. *Bogart*, 15 U. C. C. P. 1; *Wellington* v. *Wilson et al.*, 14 U. C. C. P. 299; s. c. 16 U. C. C. P. 124.) Defendants, if intending to deny property or possession when sued by a Municipal Corporation as proprietors of a road claiming property or exclusive possession, should, by plea, put in issue the right of property of the plaintiffs. (*Sarnia* v. *Great Western Railway Co.*, 17 U. C. Q. B. 65.) Roads within Townships may, under certain circumstances, be assumed as County roads. (See sec. 412.)

(*k*) The soil and freehold of roads laid out by the *Crown* is vested in the Crown. (See note *g* to sec. 405.) This portion of the section applies to roads laid out by *individuals*. The section applies as much to highways dedicated by permissive user as to highways created by some express act of dedication. (*Mytton* v. *Duck*, 26 U. C. Q. B. 61.) No one, however, is obliged to dedicate a road, and if the public take it, they must take it subject to any condition the owner imposes. (*Fisher* v. *Prowse*, 2 B. & S. 780.) The owner who dedicates to the public use as a highway a portion of his land, parts with no other

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in lieu of a street, road or highway, laid out by him without compensation therefor. (*l*) 29-30 V. c. 51, s. 338.

Councils may acquire, &c., public highways.

**408.** The Councils of every City and Town may respectively pass By-laws for acquiring and assuming possession of and control over any public highway or road in an adjacent Municipality, by and with the consent of such Municipality, the same being signified by a By-law passed for that purpose, for a public avenue or walk; (*m*) and to acquire from the

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right than the right of passage to the public over the land so dedicated, and may exercise all other rights of ownership not inconsistent therewith. (*Per* Mellor, J., in *St. Mary's, Newington*, v. *Jacobs*, L. R. 7 Q. B. 53.) There may be a dedication to the public of a right of way, such as a footpath across a field, subject to the right of the owner of the soil to plough it up in due course of husbandry, and destroy all trace of it for the time. (*Mercer* v. *Woodgate*, L. R. 5 Q. B. 26; *Arnold* v. *Blaker et al.*, L. R. 6 Q. B. 433; *Arnold* v. *Holbrook*, L. R. 8 Q. B. 96.) If a highway be out of repair or otherwise, the public have a right to pass on another line, and for this purpose to go on adjoining land (*Carrick* v. *Johnston*, 26 U.C. Q.B. 65); but such a doctrine, if still the law, is not applicable to a restricted dedication of a highway. (*Per* Cockburn, C.J., in *Arnold* v. *Holbrook*, L. R. 8 Q. B. 96-100.)

(*l*) A concession or other road, *taken* and *held* possession of by an individual in lieu of a street, road or highway laid out by him, without compensation therefor, is exempted from the operation of this section. In case any one in possession of a concession road or side line has laid out and opened a road or street in place thereof, and for which no compensation has been made to the owner, the owner, if his lands adjoin, is *entitled* thereto in lieu of the road laid out. (Sec. 426.) The Municipal Council is also authorized, under certain circumstances, to convey the portion of road to the person so entitled. (*Ib.*) If they are to exercise a discretion as to the conveying, and refuse to do so when they ought, the positive effect of the enactment, which declares that the person in possession of the original allowance "shall be entitled thereto," may be destroyed, unless the Courts have power to compel the Municipality to convey, or unless the enactment itself gives them a title thereto. The fact that this section vests the other road allowances in the Corporation and excepts those taken and held by individuals in lieu of a road laid out without compensation therefor, goes to sustain the view that such allowances are vested in those who have taken such possession of them. (*Per* Richards, C.J., in *Burritt and Marlborough*, 29 U. C. Q. B. 119-132; but see *Purdy* v. *Farley*, 10 U. C. Q. B. 545.) A Municipal Council may sell any work or macadamized or toll road which they have constructed or purchased, or any stock held in any road or other company, and apply the proceeds of such sale to the payment of existing debts contracted for the construction of the same, or for such stock, or if no debt exists for such work, road or stock, then to the general purposes of the Municipality or otherwise as they may determine. (Con. Stat. U. C. cap. 49, s. 69.)

(*m*) The powers of each Council are generally restricted to the locality over which the Council governs (see note *j* to sec. 16); but

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owners of the land adjacent to such highway or road, such land as may be required on either side of such highway or road, to increase the width thereof to the extent of one hundred feet or less, subject to the provisions of section number three hundred and seventy-three of this Act. (*n*) 29-30 V. c. 51, s. 339.

*Liability for Repairs.*

Repairing of public roads, &c.

**409.** Every public road, street, bridge and highway shall be kept in repair by the Corporation; (*o*) and on default of the Corporation so to keep in repair, the Corporation shall,

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for some purposes, in the interest of the general welfare or because of the public necessities, power is given to acquire land in an adjoining Municipality. This section is one in which a power of such a character is conferred. The power is to acquire and assume possession of and control over any public highway or road in an adjacent Municipality. The power is to be exercised for the purpose of using such highway or road "for a public avenue or walk." It cannot, of course, be of any avail unless exercised "by and with the consent" of the adjacent Municipality. Such consent is to be signified by the passing of a By-law for the purpose.

(*n*) In other words, only on payment for or compensation to the owners for the land so taken. (See sec. 373, and notes thereto.)

(*o*) The duty is to keep every public road, street, bridge and highway in *repair*. In England an obligation to keep highways in repair rests at common law on the parishes and counties. (*The King* v. *Broughton*, 5 Burr. 2700; *The King* v. *Penderryn*, 2 T. R. 513; *The Queen* v. *Scott*, 2 Ld. Rayd. 922; *The King* v. *Liverpool*, 3 East. 86; *The King* v. *Oxfordshire*, 4 B. & C. 194; *The King* v. *Eccleefield*, 1 B. & Al. 348; *The King* v. *Eastrington*, 5 A. & E. 765; *The King* v. *Leake*, 5 B. & Ad. 469-482; *The Queen* v. *Horley*, 8 L. T. N. S. 382; see also the *Queen* v. *Kitchener*, L. R. 2 C. C. 88.) It would seem that in this country there is a similar common law obligation. (*Wellington* v. *Wilson*, 14 U. C. C. P. 304; *Harrold* v. *Simcoe*, 16 U. C. C. P. 43; s. c., 18 U. C. C. P. 9; *The Queen* v. *Yorkville*, 22 U. C. C. P. 431.) "Apart from section 337 (same as sec. 409), which imposes the burden of repairing the roads within the respective Municipalities in which they are situated, the common law duty would apply to all such bodies to repair the roads which are within their jurisdiction, and for which they can raise the funds required for the purpose." (*Per* Wilson, J., in *Wellington* v. *Wilson*, 14 U. C. C. P. 304.) "We are of opinion, for the reasons hereafter given and upon the authority of decided cases, that there is a clear common law liability resting on the defendants both civilly and criminally." (*Per* Wilson, J., in *Harrold* v. *Simcoe and York*, 16 U. C. C. P. 50.) "I take it that a Corporation, charged with or assuming the custody of a road or bridge, and having funds or the means of obtaining funds, by exacting toll or levying a rate upon the members of the Corporation, with which to make repairs, is at common law bound to keep such road or bridge in an efficient state." (*Per* Vankoughnet, C., s. c. 18 U. C. C. P. 14.) "Satisfied as I am of the common law liability, I have to consider whether the presence of this section 339

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besides being subject to any punishment provided by law,

(same as sec. 409) restricts or affects the application of the common law." (*Per* Hagarty, C. J., in *The Queen* v. *Yorkville*, 22 U. C. C. P. 428.) In the United States such a duty is altogether the creature of statute. (*Morey* v. *Newfane*, 8 Barb. 645; *People* v. *Commissioners of Highways*, 7 Wend. 474; *Chidsey* v. *Canton*, 17 Conn. 475; *Riddle* v. *Proprietors of Locks and Canals on the Merrimac River*, 7 Mass. 169; *Bigelow* v. *Randolph*, 14 Gray, 541; see further, note *m* to sec. 413.) Then, what is *repair?* It is impossible to give a definition which will apply to all cases. In general terms non-repair may be said to be any defect in a highway which renders it unsafe for ordinary travel. (See *Hixon* v. *Lowell*, 13 Gray, 59; *Barber* v. *Roxbury*, 11 Allen, 318-320; *Hewison* v. *New Haven*, 34 Conn. 136-142.) In determining the question of non-repair, the nature of the country, the character of its roads, and the care usually exercised by Municipalities in reference to such roads, must all be taken into account. (*Hull* v. *Richmond*, 2 Wood & M. 337.) A new side line or concession line, opened in a Township thinly scattered, could scarcely be expected to be found in as perfect a condition as an old highway in a well settled Township. (*Per* Robinson, C. J., in *Colbeck et ux.* v. *Brantford*, 21 U. C. Q. B. 276; see further, *The Queen* v. *Board of Guardians, &c.*, 8 L. T. N. S. 383.) It must be a question of fact altogether for a jury to say whether the place alleged to be out of repair is dangerous, and, if so, from what cause; and if from a natural cause or process, whether the persons liable to repair the road could reasonably and conveniently, as regards expenditure and labour, have made the road *safe for use.* (*Per* Wilson, J., in *Caswell* v. *St. Mary's Plank Road Co.*, 28 U. C. Q. B. 247-254.) The season of the year, the place of the accident, the hour of the day or night, the manner and nature of the accident, must all be taken into consideration in determining the question. (See *Ringland* v. *Toronto*, 23 U. C. C. P. 98; *Hutton* v. *Windsor*, U. C. Q. B. H. T. 1874; *Green* v. *Danby*, 12 Vt. 338; *Rice* v. *Montpelier*, 19 Vt. 470; *Cassedy* v. *Stockbridge*, 21 Vt. 391; *Sessions* v. *Newport*, 23 Vt. 9; *Kelsey* v. *Glover*, 15 Vt. 708; *Merrill* v. *Hampden*, 26 Me. 234; *Providence* v. *Clapp*, 17 How. (U.S.) 161; *Fitz* v. *Boston*, 4 Cush. 365; *Johnson* v. *Haverhill*, 35 N. H. 74; *Winship* v. *Enfield*, 42 N. H. 197.) The cause of the accident may be either structural defect or inert matter left either upon or over the road. (*Davis* v. *Bangor*, 42 Me. 522.) In general, it must be such a defect as to render the Corporation liable to an indictment for nuisance. (*Howard* v. *Bridgewater*, 16 Pick. 189; *Merrill* v. *Hampden*, 26 Me. 234; *Ringland* v. *Toronto*, 23 U. C. C. P. 93; but see *Goldthwait* v. *East Bridgewater*, 5 Gray, 61.) In the Act of 1866 it was, in the section which gave the right of action, declared that "the default of the Corporation so to keep in repair shall be a misdemeanor." The corresponding words in this section are, "shall, besides being subject to any punishment provided by law," be civilly, &c. The change of language is not owing to any change of intention on the part of the Legislature, but to the constitutional difficulty that the local Legislature has no power to create criminal offences. (See note *v* to sec. 304.) But it is not every nuisance which obstructs, hinders or delays travellers on a highway, that constitutes non-repair of the highway. (*Per* Carpenter, J., in *Hewison* v. *New Haven*, 34 Conn. 140.) The traveller may be obstructed by a concourse of people, by a crowd of carriages; his horse may be frightened by the



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discharge of guns, the explosion of fireworks, by the falling of a signboard insecurely fastened, by military music, by the presence of wild animals, and yet the highway not be in any legal sense out of repair. (*Hixon* v. *Lowell*, 13 Gray, 59; *Davis* v. *Bangor*, 42 Me. 522; *French* v. *Brunswick*, 21 Me. 29; *Taylor* v. *Peckham*, 8 Rh. Is. 349; s. c., 5 Am. Rep. 578; *Jones* v. *Boston*, 104 Mass. 75; s. c., 6 Am. Rep. 194; see further, note *x* to sub. 42 of sec. 384.) "Any object in, upon or near the travelled path, which would necessarily obstruct or hinder one in the use of the road for the purpose of travelling thereon, or which, from its nature and position, would be likely to produce that result, would generally constitute a defect in the highway." (*Per* Carpenter, J., in *Hewison* v. *New Haven*, 34 Conn. 140.) In England it is held that the public are to be restricted to the use of the travelled way. "Although the highway be of varying and unequal width between fences on each side, the right of passage or way, *prima facie*, and unless there be evidence to the contrary, extends to the whole space between the fences, and the public are entitled to the use of the entire of it as the highway, and are not confined to the parts which may be metalled or kept in repair for the more convenient use of carriages or foot passengers." (*Per* Martin, B., in *The Queen* v. *The United Kingdom Telegraph* Co., 3 F. & F. 74; see also Con. Stat. U. C. cap. 49, s. 104, and *Tutill* v. *West Ham Local Board of Health*, L. R. 8 C. P. 447.) A different rule prevails in the United States. (*Tisdale* v. *Norton*, 8 Met. 388; *Smith* v. *Wendell*, 7 Cush. 498; *Shepherdon* v. *Colerain*, 13 Met. 55; *Kellogg* v. *Northampton*, 4 Gray, 65; s. c., 8 Gray, 504; *Howard* v. *North Bridgewater*, 16 Pick. 189; *Hayden* v. *Attleborough*, 7 Gray, 338; *Coggswell* v. *Lexington*, 4 Cush. 307; *Sparhawk* v. *Salem*, 1 Allen, 30; *Richards* v. *Enfield*, 13 Gray, 344; *Rowell* v. *Lowell*, 7 Gray, 100; *Keith* v. *Easton*, 2 Allen, 552; *Campbell* v. *Race*, 7 Cush. 408.) The duty to keep the road in repair extends as much to sidewalks for the use of pedestrians as to the travelled way for the use of carriages. (*Bacon* v. *Boston*, 3 Cush. 174; *Lowell* v. *Spaulding*, 4 Cush. 277; *Drake* v. *Lowell*, 13 Met. 292; *Hart* v. *Brooklyn*, 36 Barb. 226; *Kirby* v. *Boylston Market Association*, 14 Gray, 249; *Manchester* v. *Hartford*, 30 Conn. 118; *Hubbard* v. *Concord*, 35 N. H. 54.) So to street crossings. (*Raymond* v. *Lowell*, 6 Cush. 524; *Coombs* v. *Purrington*, 42 Me. 332; *Baker* v. *Savage*, 45 N. Y. 191.) But it is not a duty to plank from each man's house across a ditch to the street, and keep such planks in repair. (*McCarthy* v. *Oshawa*, 19 U. C. Q. B. 245.) Corporations of Townships may pass By-laws setting apart so much of any highway as they deem necessary for the purposes of a footpath, and prevent persons travelling thereon on horseback or in vehicles. (Sec. 441, sub. 4; but see *Peck* v. *Batavia*, 32 Barb. 634.) Should a railing or other barrier be necessary to the safety of passengers, it may be held to be the duty of the Corporation to provide the same. (*Williams* v. *Clinton*, 28 Conn. 264; *Tolland* v. *Wellington*, 26 Conn. 578; *Palmer* v. *Andover*, 2 Cush. 600; *Rowell* v. *Lowell*, 7 Gray, 100; *Jones* v. *Waltham*, 4 Cush. 299; *Alger* v. *Lowell*, 3 Allen, 402; *Burnham* v. *Boston*, 10 Allen, 290; *Stinson* v. *Gardiner*, 42 Me. 248; *Doherty* v. *Waltham*, 4 Gray, 596; *Davis* v. *Hill*, 41 N. H. 329; *Hayden* v. *Attleborough*, 7 Gray, 338; *Blaisdell* v. *Portland*, 39 Me. 113; *Loker* v. *Damon*, 17 Pick. 284; *Drury* v. *Worcester*, 21 Pick. 44; *State* v. *Cornville*, 43 Me. 427; *Bowman* v. *Boston*, 5 Cush. 1; *Kellogg* v. *Northampton*, 8

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Gray, 504.) But the duty is not an absolute one. (*Wilson* v. *Halifax*, L. R. 3 Ex. 114; see also *Cornwell* v. *Metropolitan Commissioners of Sewers*, 10 Ex. 771; *Crafter* v. *Metropolitan Railway Co.*, L. R. 1 C. P. 300; *Sparhawk* v. *Salem*, 1 Allen, 30; *Murphy* v. *Gloucester*, 105 Mass. 470; *Nebraska* v. *Campbell*, 2 Black. 590; *Chicago* v. *Gallagher*, 44 Ill. 295.) Allowing snow to lie on a macadamized road does not, as a general rule, come under the idea of allowing a road to be out of repair. (*Stewart* v. *Woodstock and Huron Road Co.*, 15 U. C. Q. B. 427.) There is no such thing as an absolute right against the act of God and the processes of nature. (*Per* Maule, J., in *The Queen* v. *Hornsea*, 2 C. L. R. 599.) But even in the case of snow or ice, it is for a jury to say, under the particular circumstances of the place, season, &c., if the non-removal was non-repair. (*Caswell* v. *St. Mary's, &c., Road Co.*, 28 U. C. Q. B. 247.) In *Providence* v. *Clapp*, 17 How. (U. S.) 161, the Court held that after a fall of snow it was the duty of the City to use ordinary care and diligence to restore the walk to a reasonably safe and convenient state, and that it was for the jury to find whether it was in such state or not. Mr. Justice Nelson, in delivering judgment, said, "The just rule of responsibility, and the one we think prescribed by the statute, whether the obstruction be by snow or any other material, is the removal or abatement necessary, so as to render the highway, street or sidewalk at all times safe and convenient, regard being had to its locality and uses." (See *Horton* v. *Ipswich*, 12 Cush. 488; *Loker* v. *Brookline*, 13 Pick. 343; *Hall* v. *Lowell*, 10 Cush. 260; *O'Neill* v. *Lowell*, 6 Allen, 110; *Shea* v. *Lowell*, 8 Allen, 136; *Street* v. *Holyoke*, 105 Mass. 82; *Stone* v. *Hubbardston*, 100 Mass. 49; *Gilbert* v. *Roxbury*, *Ib.* 185; *Landolt* v. *Norwich*, 6 Am. Law Reg. (N.S.) 383; *Providence* v. *Clapp*, 17 How. (U.S.) 161; *Green* v. *Danby*, 12 Vt. 338; *Tripp* v. *Lyman*, 37 Me. 250; *Savage* v. *Bangor*, 40 Me. 176; *Hubbard* v. *Concord*, 35 N. H. 52; *Ib.* 74; *Hall* v. *Manchester*, 40 N. H. 410; *Billings* v. *Worcester*, 102 Mass. 329; s. c., 3 Am. Rep. 460.) The mere fact that a highway is slippery from ice upon it, so that a person may be liable to slip and fall upon it while using ordinary care, if the way is properly and well constructed, and there is no such accumulation of ice or snow as to constitute an obstruction, and nothing in the construction or shape of the way which occasions any special liability to formation or accumulation of ice upon it, is not a defect or want of repair which will authorize a jury to find that it is not safe or convenient for travellers, &c. (*Stanton* v. *Springfield*, 12 Allen, 566.) The doctrine of this case has been affirmed in *Johnson* v. *Lowell*, 12 Allen, 572; *Nason* v. *Boston*, 14 Allen, 508; *Gilbert* v. *Roxbury*, 100 Mass. 185; *Cook* v. *Milwaukee*, 1 Am. Rep. 183; see also *Durkin* v. *Troy*, 61 Barb. 437; *Ringland* v. *Toronto*, 23 U. C. C. P. 93.) This doctrine only goes the length of holding that a way, properly constructed, and kept in such a condition as to be reasonably safe and convenient for travel at all seasons of the year, is not defective by reason of the fact that it is covered with a *smooth* and *even* surface of ice, which renders it slippery; but if the ice be allowed to remain in such an uneven and rounded condition on the surface that a person could not walk over it, using due care, without being in danger of falling down, the Municipality is liable. (*Luther* v. *Worcester*, 97 Mass. 268; *Hutchins* v. *Boston*, *Ib.* 272; *Stone* v. *Hubbardston*, 100 Mass. 49; *Billings* v. *Worcester*, 102 Mass. 329, 3 Am. Rep. 460; *Collins* v. *Council Bluffs*, 32 Iowa, 324; s. c. 7 Am. Rep. 200; see also *Mosey* v. *Troy*, 61 Barb. 580; *Mayor* v. *Marriott*,

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9 Md. 160; *Street* v. *Holyoke*, 105 Mass. 82; s. c. 7 Am. Rep. 500.) "In the case before us the question was whether there was such evidence of non-repair that the jury might reasonably and properly conclude that there was negligence in the Corporation not having had removed the piece of frozen snow or ice complained of, and that, without any want of reasonable and ordinary care upon the part of the plaintiff, the accident could and did happen, &c. (*Per* Gwynne, J., in *Ringland* v. *Toronto*, 23 U. C. C. P. 100. In actions for slipping on a sidewalk, evidence that others had met with accidents at the same place was held inadmissible. (*Hubbard* v. *Concord*, 35 N. H. 52; *Collins* v. *Dorchester*, 6 Cush. 396; *Aldrich* v. *Pelham*, 1 Gray, 510.) The following may be mentioned as a few from the many cases as to what have been held to be particular defects or want of repair:—A pile of stones (*Foreman* v. *Canterbury*, L. R. 6 Q. B. 214; *Bigelow* v. *Weston*, 3 Pick. 267; *Smith* v. *Wendell*, 7 Cush. 498; sticks of timber, logs, &c. (*Springer* v. *Bowdoinham*, 7 Me. 442; *Snow* v. *Adams*, 1 Cush. 443; *Johnson* v. *Whitefield*, 18 Me. 286; *Davis* v. *Bangor*, 42 Me. 522); posts (*Soule* v. *Grand Trunk Railway Co.*, 21 U. C. C. P. 308; *Coggswell* v. *Lexington*, 4 Cush. 307; see further, *Ray* v. *Manchester*, 46 N. H. 59); holes or excavations (*Reed* v. *Northfield*, 13 Pick. 94; *Congreve* v. *Morgan*, 5 Duer, 495; *Doherty* v. *Waltham*, 4 Gray, 596; *Willard* v. *Newbury*, 22 Vt. 458; *Batty* v. *Duxbury*, 24 Vt. 155; *Murphy* v. *Gloucester*, 105 Mass. 470; *Ghenn* v. *Provincetown*, *Ib.* 313); loose planks, projections, or other inequalities of surface (*Irwin* v. *Bradford*, 22 U. C. C. P. 19, 421; *Hall* v. *Manchester*, 40 N. H. 410; *Winn* v. *Lowell*, 1 Allen, 177; *Raymond* v. *Lowell*, 6 Cush. 524; *Hubbard* v. *Concord*, 35 N. H. 52; *Smith* v. *Wendell*, 7 Cush. 498; *Lacon* v. *Page*, 48 Ill. 499). Any object upon or near the travelled way, which in its nature is calculated to frighten horses of ordinary gentleness, may be held, under some circumstances, to constitute a defect in the way itself. (*Morse* v. *Richmond*, 41 Vt. 435; *Chamberlain* v. *Enfield*, 43 N. H. 356; *Winship* v. *Enfield*, 42 N. H. 197, *Lund* v. *Tyngsboro'*, 11 Cush. 563; *Dimock* v. *Suffield*, 30 Conn. 129; but see *Horton* v. *Taunton*, 97 Mass. 266; *Kingsbury* v. *Dedham*, 13 Allen, 186; *Cook* v. *Charlestown*, *Ib.* 190, n.; *Keith* v. *Easton*, 2 Allen, 552; see also *Corby* v. *Hill*, 4 C. B. N. S. 556; *Pickard* v. *Smith*, 10 C. B. N. S. 470; *Soule* v. *Grand Trunk R. Co.*, 21 U. C. C. P. 308; *Vars* v. *Grand Trunk R. Co.*, 23 U. C. C. P. 143.) The onus is on the plaintiff to give affirmative evidence of negligence. (*Lester* v. *Pittsford*, 7 Vt. 158; *Perkins* v. *Concord Railway Co.*, 44 N. H. 223.) The jury are not to infer a defect on a highway at a particular time and place *merely* from the fact that an injury was sustained at that time and place. (*Church* v. *Cherryfield*, 33 Me. 460; *Sherman* v. *Kortright*, 52 Barb. 267; *Collins* v. *Dorchester*, 6 Cush. 396; *Packard* v. *New Bedford*, 9 Allen, 200; *Calkins* v. *Hartford*, 33 Conn. 57; but see *Kearney* v. *London*, *Brighton*, *&c. Railway Co.*, L. R. 5 Q. B. 411; s. c. L. R. 6 Q. B. 759.) If the evidence is as consistent with the absence as with the presence of negligence, the plaintiff is not entitled to recover. (*Deverill* v. *Grand Trunk Railway Co.*, 25 U. C. Q. B. 517; see also *Cotton* v. *Wood*, 8 C. B. N. S. 568; *Toomey* v. *London*, *Brighton*, *&c. Railway Co.*, 3 C. B. N. S. 146; *Cornman* v. *Eastern Counties Railway Co.*, 4 H. & N. 781; *Crafter* v. *Metropolitan Railway Co.*, L. R. 1 C. P. 300; *Jackson* v. *Hyde*, 28 U. C. Q. B. 294; *Henderson* v. *Barnes*, 32 U. C. Q. B. 176.) Negligence is want of care. A corporate body

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never can either take care or neglect to take care except through its servants. If such a body, by its servants, have the means of knowledge that a highway is unfit for travel, and are negligently ignorant of its state, they are guilty of negligence. (See *Mersey Dock H. Co.* v. *Penhallow*, 7 H. & N. 329; s. c. L. R. 1 H. L. Cases, 93; see also *Thompson* v. *North Eastern Railway Co.*, 3 L. T. N. S. 618; *Submarine Telegraph Co.* v. *Dickson*, 15 C. B. N. S. 759.) It is no defence that they appointed a proper Overseer of Highways and gave him means and authority to keep the road in good order. The Municipal Corporation are, as it were, themselves the overseers of the highway, and on this principle bound to keep it in repair. They have not only the duty thrown expressly upon them of keeping highways in repair, but have all necessary powers given to them for enabling them to perform that duty. The Corporation must at their peril answer for the consequences of the duty not being performed. The negligence of their officers or servants is no answer. (*Per* Robinson, C. J., in *Colbeck* v. *Brantford*, 21 U. C. Q. B. 276.) Nor is it any excuse that the alleged defect arose from the necessary repairs of the highway; for in such a case there should be a light or other signal to warn travellers of existing danger in the use of the way. (*Buffalo* v. *Holloway*, 3 Seld. 493; *Hutson* v. *New York*, 9 N.Y. 163; *Storrs* v. *Utica*, 17 N. Y. 104; *Milwaukee* v. *Davis*, 6 Wis. 377; *Smith* v. *Milwaukee*, 18 Wis. 63; *Pettigrew* v. *Evansville*, 25 Wis. 223.) Where a statutory obligation is imposed on a person, he is liable for any injury that arises to others in consequence of its having been negligently performed, and this whether it was performed by himself or by a contractor employed by him. (*Gray et ux.* v. *Pullen et al.*, 5 B. & S. 970; s. c., in error, *Ib.* 980.) If the defect arise otherwise than from faulty structure, and from some act other than the direct conduct of the defendants or their servants, and be a recent defect, it is generally necessary to show that defendants or their servants had knowledge thereof, or were negligently ignorant of it. (See *New York* v. *Sheffield*, 4 Wallace, 189; *Griffin* v. *New York*, 9 N.Y. 456; *Vandyke* v. *Cincinatti*, 1 Deseney, 532; *McGinity* v. *New York*, 5 Duer, 674; *Hart* v. *Brooklyn*, 36 Barb. 226; *Dewey* v. *Detroit*, 15 Mich. 307; *Prindle* v. *Fletcher*, 39 Vt. 257; *Yale* v. *Hampden and Berkshire Turnpike Co.*, 18 Pick. 357; *Davis* v. *Lamoille Plank Road Co.*, 27 Vt. 602; *Goodnough* v. *Oshkosh*, 24 Wis. 549; s. c., 1 Am. Rep. 202; *Colley* v. *Westbrook*, 57 Me. 181; s. c., 2 Am. Rep. 30; *Weisenberg* v. *Appleton*, 26 Wis. 56; s. c., 7 Am. Rep. 39.) Notice may be inferred from the notoriety of the defect, and from its continuance for such a length of time as to lead to the presumption that the proper officers of the Municipality did in fact know, or with proper care or diligence might have known, of the fact. "This latter is sufficient, because this degree of care and diligence they are bound to exercise; and therefore if, in point of fact, they do not know of such defect, when by ordinary and due vigilance and care they would have known it, they must be responsible, as if they had actual notice." (*Per* Shaw, C. J., in *Reed* v. *Northfield*, 13 Pick. 94; see further, *Dewey* v. *Detroit*, 15 Mich. 307; *Mayor* v. *Sheffield*, 4 Wall. 189; *Serrot* v. *Omaha*, 1 Dill. C. C. R. 312; *How* v. *Plainfield*, 41 N. H. 135.) If the defect be palpable, dangerous, and has existed for a long time, the jury may very properly infer either negligent supervision and ignorance consequent upon and chargeable to such neglect, or notice of the defect and a disregard of the duty to repair it. (*Manchester* v. *Hartford*, 30 Conn.

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be civilly responsible (*p*) for all damages sustained by any

118; see further, *Bloomington* v. *Bay*, 42 Ill. 503; *Howe* v. *Lowell*, 101 Mass. 99; *Donaldson* v. *Boston*, 16 Gray, 508; *Colley* v. *Westbrook*, 57 Me. 181; s. c., 2 Am. Rep. 30.) Where an injury was produced by some sudden and unexpected cause, it was held that the Corporation were not liable till they had a reasonable opportunity to repair before the accident. (*Hubbard* v. *Concord*, 35 N. H. 52; *Barton* v. *Syracuse*, 36 N. Y. 54; *Springfield* v. *LeClaire*, 49 Ill. 476.) Notice to a citizen is not to the Corporation (*Donaldson* v. *Boston*, 16 Gray, 508), although held otherwise in Maine (*Springer* v. *Bowdoinham*, 7 Greenl. 442; *Mason* v. *Ellsworth*, 32 Me. 271.) Speaking of a sewer, Morrison, J., said, "It did not appear, however, when the mud accumulated in the culvert or when the stone fell at its mouth, the mere existence of these obstructions was not, in my opinion, enough to establish negligence. There was no evidence that the defendants or their officers had any notice of these obstructions; nor did it appear that they were of so notorious a character, or had continued so long as to charge the defendants with constructive notice of them." (*Bateman* v. *Hamilton*, 33 U. C. Q. B. 251. But as to sewers, see *Barton* v. *Syracuse*, 36 N. Y. 54; *Springfield* v. *LeClaire*, 49 Ill. 476. There is no presumption of law as to notice. It is for a jury to decide whether, from the circumstances, there was notice. (*Colley* v. *Inhabitants*, 2 Am. Rep. 30; *Hall* v. *Lowell*, 10 Cush. 260; *Stanton* v. *Springfield*, 12 Allen, 566; *Mosey* v. *Troy*, 61 Barb. 580.) In some States of the Union existence of the defect for twenty-four hours (*Brady* v. *Lowell*, 3 Cush. 121), or express notice (*Tripp* v. *Lyman*, 37 Me. 250), is necessary by statute before there can be any right of action against the Corporation.

(*p*) The action is local, and must be brought in the County where the road is situate. (*Ferguson* v. *Howick*, 25 U. C. Q. B. 547; *Irwin* v. *Bradford*, 22 U. C. C. P. 18.) In such an action it must be made to appear that the alleged defect was the direct and proximate cause of the injury. (*Adams* v. *Carlisle*, 21 Pick. 146; *May* v. *Princeton*, 11 Met. 442; *Holman* v. *Townsend*, 13 Met. 297; *Lund* v. *Tyngsboro'*, 11 Cush. 563; *Horton* v. *Ipswich*, 12 Cush. 488; *Marble* v. *Worcester*, 4 Gray, 395; *Tuttle* v. *Holyoke*, 6 Gray, 447; *Stickney* v. *Maidstone*, 30 Vt. 738; *Sears* v. *Dennis*, 105 Mass. 310; *Manderschid* v. *Dubuque*, 29 Iowa, 73.) The obligation to keep in repair is only as against such accidents as are likely to and actually do occur in using a highway for the purpose of travel. (*Per* Barrett, J., in *Sykes* v. *Pawlet*, 43 Vt. 446; s. c., 5 Am. Rep. 296.) If the violence of the horse, acting without guidance or discretion, be the immediate cause of the injury, the Corporation is not liable. (*Bliss* v. *Wilbraham*, 8 Allen, 564; *Illinois Central Railroad Co.* v. *Buckner*, 28 Ill. 299; *Murdoch* v. *Warwick*, 4 Gray, 178; *Dennett* v. *Wellington*, 15 Me. 27; *Palmer* v. *Andover*, 2 Cush. 600; see also *Marble* v. *Worcester*, 4 Gray, 395; *Davis* v. *Dudley*, 4 Allen, 557; *Moulton* v. *Sanford*, 51 Me. 127.) Where a horse, by reason of fright, disease or viciousness, and through no fault of the Corporation, becomes actually uncontrollable, so that his driver cannot stop or direct his course, and in this condition comes upon a defect in the highway, by which an injury is occasioned, the Corporation is not liable, unless it be made to appear that it would

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have occurred even if the horse had been under control. (*Titus* v. *Northbridge*, 97 Mass. 258.) So where a horse in a state of fright, by his uncontrollable force, backed a waggon and himself over an embankment. (*Horton* v. *Taunton*, *Ib.* 266; *Sykes* v. *Pawlet*, 43 Vt. 446; s. c., 5 Am. Rep. 295.) So if the injury be attributable to any unskilfulness or want of care on the part of the driver, there can be no recovery. (*Flower* v. *Adam*, 2 Taunt. 314; *Cassedy* v. *Stockbridge*, 21 Vt. 391; *Peoria Bridge Association* v. *Loomis*, 20 Ill. 235; *Alger* v. *Lowell*, 3 Allen, 402; *Stuart* v. *Machias Port*, 48 Me. 477; *Cobb* v. *Standish*, 14 Me. 198; *Marriott* v. *Stanley*, 1 M. & G. 568.) "I believe I told the jury that if they thought the plaintiff's running against the second heap of rubbish was owing to his not being able to manage his horse, they should find for the defendant. But is not this too remote to affect the defendant in this action? Here is a heap of rubbish; the dust arises from it; the horse runs towards a waggon, and the driver, without necessity, that is, without the necessity of turning his horse so violently as he did, pulls him that way. I rather think it is either accident or inability of the driver." (*Per* Mansfield, C. J., in *Flower* v. *Adam*, 2 Taunt. 317.) "The immediate and proximate cause is the unskilfulness of the driver." (*Per* Lawrence, J., in same case.) So if the accident really and substantially arose by reason of some defect in the plaintiff's waggon, harness, &c. (*Jenks* v. *Wilbraham*, 11 Gray, 142; *Noyes* v. *Morristown*, 1 Vt. 357; *Allen* v. *Hancock*, 16 Vt. 230; *Bigelow* v. *Rutland*, 4 Cush. 247; *Moore* v. *Abbot*, 32 Me. 46; *Farrar* v. *Greene*, *Ib.* 574; see also *Clark* v. *Barrington*, 41 N. H. 44; *Tucker* v. *Hennecker*, *Ib.* 317; *Winship* v. *Enfield*, 42 N. H. 197; *Palmer* v. *Andover*, 2 Cush. 600; *Hunt* v. *Pownall*, 9 Vt. 411.) So if it be shown that the plaintiff in any manner, by his own want of care, directly contributed to the happening of the accident. (*Butterfield* v. *Forrester*, 11 East. 60; *Woolf* v. *Beard*, 8 C. & P. 373; *Smith* v. *Smith*, 2 Pick. 621; *Bridge* v. *Grand Junction Railway Co.*, 3 M. & W. 244; *Waite* v. *North Eastern Railway Co.*, E. B. & E. 719; *Baker* v. *Portland*, 58 Me. 199; s. c., 4 Am. Rep. 274; *Tuff* v. *Warman*, 2 C. B. N. S. 740; s. c., 5 C. B. N. S. 573; *Witherley* v. *Regent's Canal Co.*, 12 C. B. N. S. 2; *Bradley* v. *Brown et al.*, 32 U. C. Q. B. 463.) The rule operates also in the case of children of tender age. (*Mangan* v. *Atterton*, L. R. 1 Ex. 239; *Singleton* v. *Eastern Counties Railway Co.*, 7 C. B. N. S. 287.) The question of contributory negligence arises when both parties are substantially at fault, and when the fault of each contributes to the disaster. (*Per* Cleasby, B., in *Gee* v. *Metropolitan Railway Co.*, L. R. 8 Q. B. 177.) If there be no dispute as to the fact, the question of contributory negligence becomes a question of law, and the Court may properly nonsuit. (*Winckler* v. *Great Western Railway Co.*, 18 U. C. C. P. 250, 262; *Nicholls* v. *Great Western Railway Co.*, 27 U. C. Q. B. 382; *Rastrick* v. *Great Western Railway Co.*, *Ib.* 396; see also *Bridges* v. *The North London Railway Co.*, L. R. 6 Q. B. 377; *Bellfontaine Railroad Co.* v. *Hunter*, 33 Ind. 335; s. c., 5 Am. Rep. 201; *Adams* v. *Lancashire and Yorkshire Railway Co.*, L. R. 4 C. P. 739; *Gee* v. *Metropolitan Railway Co.*, L. R. 8 Q. B. 177; *Cornish* v. *Toronto Street Railway Co.*, U. C. C. P. M. T. 1873.) It is not such negligence as to prevent a recovery, that the traveller did not know the road, and yet proceeded on a dark night. (*Williams* v. *Clinton*, 28 Conn. 264.) So driving in a violent storm through the streets of a city with which the driver was unacquainted, was held not of itself to be such negli-

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Limitation of actions.

person by reason of such default, (*q*) but the action must be

gence as to prevent recovery by him for injuries sustained through defect in the street. (*Milwaukee* v. *Davis*, 6 Wis. 377.) Being blind, halt or deaf is not *per se* to be taken as evidence of contributory negligence. All persons, however blind, halt or deaf, have a right to act on the assumption that the highway is reasonably safe. (*Davenport* v. *Ruckman*, 37 N. Y. 568; *Renwick* v. *New York Central Railroad Co.*, 36 N. Y. 133.) "The streets and sidewalks are for the benefit of all conditions of people; and all have the right, in using them, to assume that they are in good condition, and to regulate their conduct upon that assumption. A person may walk or drive in the darkness of the night, relying upon the belief that the Corporation has performed its duty, and that the street or the walk is in a safe condition. He walks by a faith justified by law, and if his faith is unfounded and he suffers an injury, the party in fault must respond in damages. So one whose sight is dimmed by age, or a near-sighted person whose range of vision was always imperfect, or one whose sight has been injured by disease, is each entitled to the same rights, and may act on the same assumption. Each, however, is bound to know that prudence and care are in turn required of him, and that if he fails in this respect, any injury he may suffer is without redress." (*Per* Hunt, C.J., in *Davenport* v. *Ruckman*, 37 N. Y. 573.) It is not, however, too much to ask of persons of defective sight greater care than is required of persons free from such infirmity. (*Winn* v. *Lowell*, 1 Allen, 177; see also *Bridges* v. *North London Railway Co.*, L. R. 6 Q. B. 377, 397.) No person is required to have perfect vision, or to be vigilant in the discovery of defects which ought not to exist. (*Thompson* v. *Bridgewater*, 7 Pick. 188.) No person is in fault in neglecting to observe and avoid a defect not so plain and obvious as to be necessarily observable by one in the possession of ordinary faculties, travelling at an ordinary pace. (*Cox* v. *Westchester Turnpike Co.*, 33 Barb. 414; *Frost* v. *Waltham*, 12 Allen, 85.) The fact that the traveller knew the danger, or was familiar with the road, is a circumstance to be considered in determining the question whether the plaintiff contributed by his own want of care to the accident. (*Clayards* v. *Dethick*, 12. Q B. 439; *Reed* v. *Northfield*, 13 Pick. 94; *Humphreys* v. *Armstrong County*, 56 Penn. St. 204; *Smith* v. *Lowell*, 6 Allen, 39; *Snow* v. *Housatonic Railroad Co.*, 8 Allen, 441; *Frost* v. *Waltham*, 12 Allen, 85; *Clark* v. *Lockport*, 49 Barb. 580; *Whittaker* v. *West Boyleston*, 97 Mass. 273; *Fox* v. *Sackett*, 10 Allen, 535.) Such knowledge in some cases has been held sufficient to raise a presumption of negligence on plaintiff's part, so as to require evidence to negative the presumption. *Fox* v. *Glastenbury*, 29 Conn. 204; *Folsom* v. *Underhill*, 36 Vt. 580; *Wilson* v. *Charlestown*, 8 Allen, 137; *Jacobs* v. *Bangor*, 16 Me. 187; *Hanlon* v. *Keokuk*, 7 Iowa, 477; *Brown* v. *Jefferson*, 16 Iowa, 339; *Smith* v. *Lowell*, 6 Allen, 39; *Wilson* v. *Charlestown*, 8 Allen, 137; *Horton* v. *Ipswich*, 12 Cush. 488; *James* v. *San Francisco* 6 Cal. 528.) Contributory negligence is not an answer to an indictment for manslaughter, in which the Queen, as representing the nation, is plaintiff. (*The Queen* v. *Kew et al.*, 12 Cox. C. C. 355.)

(*q*) The question of the measure of damages is one that has produced more difficulty than perhaps any other branch of the law.

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brought within three months after the damages have been

(*Per* Wilde, B., in *Gee* v. *Lancashire, &c., Railway Co.*, 6 H. & N. 211; see also *Rowley* v. *London and North Western Railway Co.*, L. R. 8 Ex. 221.) "We have no means of ascertaining by a fixed rule what shall be the limit of damages in such a case (action for negligence). There is no principle which will apply equally to animals, goods and passengers. Damages in such a case must be left to the common sense of the jury, assisted by the presiding Judge." (*Per* Mellor, J., in *Fair* v. *London and North Western Railway Co.*, 21 L. T. Rep. 326; see also *Collins* v. *Council Bluffs*, 32 Iowa, 324, 7 Am. Rep. 200; *Chicago* v. *Langlass*, 4 Am. Rep. 603; *Chicago* v. *Martin*, 49 Ill. 241.) "It would be most unjust if, whenever an accident occurs, juries were to visit the unfortunate cause of it with the utmost amount that they think an equivalent for the mischief done. . . . Scarcely any sum would compensate a labouring man for the loss of a limb; yet you do not, in such a case, give him enough to maintain him for life." (*Per* Parke, B., in *Armsworth* v. *South Eastern Railway Co.*, 11 Jur. 760, cited in 18 Q. B. 104.) "It is very true that cases sometimes occur in which a jury, being over-anxious to fully compensate a party, give damages so great as to induce the Court to interfere. In the great majority of cases, however, I am satisfied with the common sense views upon which they act." (*Per* Cockburn, C. J., in *Fair* v. *London and North Western Railway Co.*, 21 L. T. Rep. 327.) The rule is that the damages should be such as to furnish a *reasonable compensation* for the injury sustained. (*Chicago* v. *Langlass*, 4 Am. Rep. 603; see also *Dicatur* v. *Fisher*, 53 Ill. 407.) In assessing the compensation to a person injured through the negligence of a Municipal Corporation, the jury should take into consideration two things—first, the pecuniary loss he sustains by the accident; second, the injury he sustains in his person, or his physical capacity for enjoying life. When they come to the consideration of pecuniary loss, they have to take into account not only his present loss, but his incapacity to earn a future improved income. Then as to the second ground; undoubtedly health is the greatest of all physical blessings, and to say that when it is utterly shattered no compensation is to be made for it, is really perfectly extravagant. (*Per* Cockburn, C. J., in *Fair* v. *London and North Western Railway Co.*, 21 L. T. N. S. 327.) There is no limitation by this statute as to the amount, or the elements for consideration in estimating the amount. In Maine a person can recover only for "bodily injury" or "damage to property." (*Weeks* v. *Shirley*, 33 Me. 271; *Verrill* v. *Minot*, 31 Me. 299; *Mason* v. *Ellsworth*, 32 Me. 271; *Brown* v. *Watson*, 47 Me. 161; *State* v. *Hewett*, 31 Me. 396-400; *Reed* v. *Belfast*, 20 Me. 246; *Sanford* v. *Augusta*, 32 Me. 536; *Stover* v. *Bluehill*, 51 Me. 439.) So in Connecticut and Massachusetts, the recovery can only be for damages "to the person or property." (*Chidsey* v. *Canton*, 17 Conn. 475; *Beecher* v. *Derby Bridge Co.*, 24 Conn. 491; *Canning* v. *Williamstown*, 1 Cush. 451; *Harwood* v. *Lowell*, 4 Cush. 310.) In Vermont, however, any special damage sustained is recoverable. (*Bailey* v. *Fairfield*, Brayt. 126.) So in Wisconsin. (*Weisenberg* v. *Appleton*, 26 Wis. 56, 7 Am. Rep. 39.) If the action be, by the personal representative, brought under what is commonly called Lord Campbell's Act, the jury, in estimating the damages, are restricted to compensation for pecuniary loss only,

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Proviso. sustained: (*r*) Provided that this section shall not apply to

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and cannot take into consideration mental or bodily suffering. (*Armsworth* v. *South Eastern Railway Co.*, 11 Jur. 758; *Blake* v. *Midland Railway Co.*, 18 Q. B. 93; *Franklin* v. *South Eastern Railway Co.*, 3 H. & N. 211; *Duckworth* v. *Johnson*, 4 H. & N. 653; *Dalton* v. *South Eastern Railway Co.*, 4 C. B. N. S. 296; *Pym* v. *Great Northern Railway Co.*, 2 B. & S. 759; s. c. 4 B. & S. 396; *Secord* v. *Great Western Railway Co.*, 15 U. C. Q. B. 631; *Morley* v. *Great Western Railway Co.*, 16 U. C. Q. B. 504; *Pennsylvania Railroad Co.* v. *McCloskey*, 23 Penn. St. 526; *Quin* v. *Moore*, 15 N. Y. 432; *Lucas* v. *New York*, 21 Barb. 245; *Safford* v. *Drew*, 3 Duer. 627; *Soule* v. *New York Railroad*, 24 Conn. 575; *Rowley* v. *London and North Western Railway Co.*, L. R. 8 Ex. 221; *Johnson* v. *Hudson River Railroad Co.*, 6 Duer. 634, 648. The Corporation cannot claim to have deducted the amount of an accident policy (*Harding* v. *Townshend*, 43 Vt. 536; s. c. 5 Am. Rep. 304; *Althorf* v. *Wolfe*, 2 Hilton (N. Y.), 344, affirmed 22 N. Y. 365; see also *Yates* v. *Whyte*, 4 Bing. (N. C.) 272; *Hunter* v. *King*, 4 B. & Al. 209); but has a remedy over against the private person who so used the highway as to cause the defect. (*Chicago* v. *Robins*, 2 Black. 418; *Robbins* v. *Chicago*, 4 Wallace, 657; *Phœnixville* v. *Phœnix Iron Co.*, 45 Penn. St. 135; *Raymond* v. *Lowell*, 6 Cush. 524; *Sessions* v. *Newport*, 23 Vt. 9; *Pachard* v. *New Bedford*, 9 Allen, 200.) If there be fault not only on the part of the private person but of the Corporation, there is no remedy, as there is no compensation among wrong-doers. (*Chicago* v. *Robbins*, 2 Black. 418; *Buffalo* v. *Holloway*, 14 Barb. 101; s. c. 7 N. Y. 493; but see *Littleton* v. *Richardson*, 34 N. H. 179; *Boston* v. *Worthington*, 10 Gray, 496.) In several of the New England States a recovery over is given by statute. (See *Lowell* v. *Short*, 4 Cush. 275; *Milford* v. *Holbrook*, 9 Allen, 17; *Lowell* v. *Boston and Lowell Railroad Co.*, 23 Pick. 24; *Winship* v. *Enfield*, 42 N. H. 197; *Hooksett* v. *Amoskeog Co.*, 44 N. H. 105; *Monmouth* v. *Gardiner*, 35 Me. 247; *Patterson* v. *Colebrook*, 9 Foster, 94; *Veazie* v. *Penobscot Railroad Co.*, 49 Me. 119.) In the State of Maine, a person travelling on Sunday, unless for charity or necessity, so far violates the law that he cannot maintain an action for injuries sustained on that day by non-repair of a highway. (*Hinckley* v. *Penobscot*, 42 Me. 81.) No distinction, in such case, is made between those who travel within the Corporation limits and those who travel from Township to Township. (*Tillock* v. *Webb*, 56 Me. 100.) A person walking on Sunday to make a visit of pleasure to the house of a friend, and so sustaining an injury, was held not entitled to sue. (*Cratty* v. *Bangor*, 57 Me. 423; s. c. 2 Am. Rep. 56.)

(*r*) The limitation as to three months applies only to acts of omission, *i.e.* non-repair (*Rowe* v. *Leeds and Grenville*, 13 U. C. C. P. 515), not to acts of commission, as the negligent placing of gravel on the sides of the road and taking no precaution to prevent persons passing along the road from running against these heaps, whereby a person so driving might run against the heaps and be thereby injured. (*Ib.*) Where the section is applicable, no additional time is given to a legal representative to bring the action, owing to the death of the intestate, by reason of negligence within the meaning of the section. (*Turner* v. *Brantford*, 13 U. C. C. P. 109.) The statute begins to run from

case it appears to run does not bear and death - the cause of action accrues the death of the intestate - had the accident 3 mos before the death which was the

any road, street, bridge or highway laid out by any private person; and the Corporation shall not be liable to keep in repair any such last mentioned road, street, bridge or highway, until established by By-law of the Corporation, or otherwise assumed for public user by such Corporation. (*s*) 34 V. c. 30, s. 5.

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the occurrence of the accident, not from the death. (*Miller* v. *North Fredericksburg*, 25 U. C. Q. B. 31.) So where plaintiff's mare fell through a bridge and was injured, but did not die for four months afterwards, when the action was brought it was held to be too late. (*Ib.*) As soon as the mare was injured by falling through the bridge, the plaintiff's cause of action was complete. His damages in the words of the statute were then and from that time sustained. The subsequent death of the mare was merely additional evidence of the extent of his damages. (*Ib.*) The damage was not the less because he did not at the time know its full extent. (*Ib.*)

(*s*) This proviso does not apply to roads laid out by the Government, and afterwards abandoned to the Municipalities. (*Irwin* v. *Bradford*, 22 U. C. C. P. 18.) All the Legislature meant by it is that the merely laying out of a road or the building of a bridge by private owners shall not thereby cast a criminal and civil responsibility on the Municipality, or on the public represented by them. "It is very easy to imagine cases where such a provision should most properly apply, especially in a country where such large open spaces are included in town and city limits—in some cases containing tracts of land in their original state. A landholder might, merely for his personal convenience, stake out half-a-mile of road through his land, cleared or uncleared, and declare that he dedicated it to the public. Such a proceeding, by itself, should not render the Municipality liable. But after this is done, and for a long series of years the public (*alias* the Municipality) use the road as a frequented thoroughfare; houses are built along it as their chief if not their only way of egress and ingress, and which houses are forthwith taxed by the Municipality; repairs are regularly done to it every year by the road officers out of public moneys;—it would then, I think, be an unparalleled state of the law if it lie in the mouth of the Municipality to declare that they are under no responsibility." (*Per* Hagarty, C. J., in *The Queen* v. *Yorkville*, 22 U. C. C. P. 431, 439.) "The adoption of a road by the parish is no more than the use of it by the public." (*The King* v. *Leake*, 5 B. & Ad. 484.) If the road be used by the public, the parish must repair it, although neither the dedication nor the user has been adopted or acquiesced in by the parish. (*Ib.* 469; see also *The King* v. *Lyon*, 5 D. & R. 497; *The Queen* v. *Newbold*, 19 L. T. N. S. 656; *Foreman* v. *Canterbury*, L. R. 6 Q. B. 214.) If a Municipal Corporation have created a street as a public street, taking charge of it and regulating it as other streets in the Municipality, they cannot be allowed, when sued for an injury arising out of their negligence by one of the public, to repudiate their liability. (*Mayor, &c.* v. *Sheffield*, 4 Wall. 189; see also *Irwin* v. *Bradford*, 22 U. C. C. P. 18; s. c. *Ib.* 421.) Work done by proper authority to repair roads used as highways, when no evidence of their establishment under statute nor other evidence of acceptance is shown, has

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*What are County Roads.*

Jurisdiction of county councils over roads and bridges.

**410.** The County Council shall have exclusive jurisdiction (*t*) over all roads and bridges lying within any Town

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repeatedly, in the United States, been held sufficient to authorise the inference of acceptance by the constituted public authorities. (*Marcy* v. *Taylor*, 19 Ill. 634; *Folsom* v. *Underhill*, 36 Vt. 580; *State* v. *Atherton*, 16 N. H. 203; *People* v. *Jones*, 6 Mich. 176; *Alvord* v. *Ashley*, 17 Ill. 363; *Commonwealth* v. *Belding*, 13 Met. 10; *Green* v. *Canaan*, 29 Conn. 157; *Guthrie* v. *New Haven*, 31 Conn. 308.) Though the rule is not uniformly recognized in the United States, it is believed that the weight and prevailing current of authorities support it. (*Curtiss* v. *Hoyt*, 19 Conn. 154–169; *Baker* v. *Clark*, 4 N. H. 380; *State* v. *Nudd*, 3 Fost. 327; *Cole* v. *Sprowl*, 35 Me. 161; *People* v. *Beaubien*, 2 Doug. 256–286; *State* v. *Catlin*, 3 Vt. 530; *Marcy* v. *Taylor*, 19 Ill. 634; *Boyer* v. *State*, 16 Ind. 451; *Morse* v. *Ranno*, 32 Vt. 600; *Holdane* v. *Cold Spring*, 21 N.Y. 474; *Gwynne* v. *Homan*, 15 Ind. 201; *Leech* v. *Waugh*, 24 Ill. 228; *Connehan* v. *Ford*, 9 Wis. 216; *Daniels* v. *People*, 21 Ill. 439; *Holdane* v. *Cold Spring*, 23 Barb. 103; *Jennings* v. *Tisbury*, 5 Gray, 73; *Russell* v. *New York Central Railroad Co.*, 26 Barb. 430; *Hays* v. *State*, 8 Ind. 425; *State* v. *Hill*, 10 Ind. 219; *Smith* v. *State*, 3 Zabr. 130; *State* v. *Sartor*, 2 Stro. 60; *State* v. *Atherton*, 16 N. H. 202.) It is doubtless within the power of Municipal Councils to close up or by proper action refuse to accept highways established by dedication; so that it is impossible for landowners to force upon the public roads not necessary for public convenience. Such as are necessary the public ought to repair. (*Per* Beck, J., in *Manderschid* v. *Dubuque*, 29 Iowa, 73; s. c., 4 Am. Rep. 196.)

(*t*) It is by section 405 enacted that *the soil and freehold* of every highway or road, altered, amended or laid out according to law, shall be vested in Her Majesty, her heirs and successors. It is by section 407 enacted that *every public road, street, bridge or other highway* (not saying soil or freehold), in a City, Township, Town or Incorporated Village, shall be vested in the Municipality, *subject to any rights in the soil* which the individuals who laid out such road, street, bridge or highway reserved. It is, by the section here annotated, enacted that the County Council shall have *exclusive jurisdiction* over the roads and bridges mentioned, which may include roads and bridges such as mentioned in sections 405 and 407. The Editor endeavoured, in note *g* to section 405, to reconcile sections 405 and 407. It is now necessary to reconcile the section under consideration with those sections.

The section under consideration, it will be observed, omits all reference to "the soil and freehold," as provided for in sections 405 and 407, and omits the use of the word "vest," as used in the latter section. It simply declares that as to the roads and bridges intended, the County Council (not Corporation) shall have *exclusive jurisdiction*. The reason which probably led the Legislature to confer the exclusive jurisdiction upon Counties over County roads and bridges, without vesting the soil or property of them in the Counties, was, that the County has no peculiar or exclusive locality constituting the County, apart from the separate Municipalities which compose it;

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or Village of the County, and which the Council by By-law assumes, with the assent of such Town or Village Municipality, as a County road or bridge, until the By-law has been

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and it might seem inconsistent, after vesting every public road, street, bridge or other highway, in a City, Township, Town or Incorporated Village, in the Crown or in the particular local Municipality, to vest any of the same highways in the Corporation of the County, and therefore "the exclusive jurisdiction" was alone conferred upon the County Council, as the grant of a power sufficiently large for all practical purposes, and indicating that the local Municipality or Municipalities are to be excluded from all interference in the exercise of that power. (*Per* Adam Wilson, J., in *Wellington* v. *Wilson et al.*, 16 U. C. C. P. 130.) That every public road in a Township is vested in the Municipality thereof, must be taken with some limitation; for the County Council has, under this section, exclusive jurisdiction over all roads, &c., lying within any Town or Village of the County which the County Council, with the assent of such Town or Village Municipality, assumes as a County road. (See *Per* John Wilson, J., in *The Queen* v. *Louth*, 13 U. C. C. P. 615–618.) The section here annotated, before the amendment of last session applied only to roads or bridges within Townships. (*Per* Burns, J., in *St. George's Church* v. *Grey*, 21 U. C. Q. B. 265.) As to these, there was power to assume them with or without the assent of the Township Municipality. The section is now so amended as to omit Townships, and to provide for the assumption of roads and bridges in Towns or Villages as County roads or bridges, with the assent of the Town or Village Municipality.

The exclusive jurisdiction is conferred as to the following roads and bridges:

1. All roads and bridges lying *within* any Town or Village of the County, *and* which the Council of the County, with the assent of the local Municipality, assumes as a County road or bridge.

2. All bridges across streams separating two Townships in the County.

3. All bridges crossing rivers over one hundred feet in width, within the limits of any Incorporated Village in the County, and connecting any highway leading through the County. (See note *c* to sec. 412.)

4. Every road or bridge dividing different Townships, although such road or bridge may so deviate as in some places to lie wholly or in part within one Township.

It is not necessary that the road between Townships should consist of original allowances only. Such a road may be acquired by purchase or dedication, as in other cases; and when once established by any lawful means, it is a road for all purposes, and subject to the common accidents and laws applicable to highways in the particular locality in which situate. (*Per* Wilson, J., *In re McBride and York*, 31 U. C. Q. B. 355.) In all cases of roads or bridges *dividing* two Townships in the County, the County Council has exclusive jurisdiction by authority of the statute, without any By-law whatever. (*Per* Adam Wilson, J., in *Wellington* v. *Wilson et al.*, 14 U. C. C. P. 303.) So as to bridges crossing rivers one hundred feet in width, such as mentioned in the third division.

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repealed by the Council, (*u*) and over all bridges across streams separating two Townships in the County, and over all bridges crossing streams or rivers over one hundred feet in width within the limits of any Incorporated Village in the County, and connecting any highway leading through the County, and over every road or bridge dividing different Townships, although such road or bridge may so deviate as in some places to lie wholly or in part within one Township. (*v*) 29-30 V. c. 51, s. 341; 34 V. c. 30, s. 7; 37 V. c. 16, s. 17.

Boundary lines.

**411.** Any County Council may assume, make and maintain any Township or County boundary line at the expense of the County, or may grant such sum or sums from time to time for the said purposes as they may deem expedient. (*a*) 29-30 V. c. 51, s. 341, sub. 11.

*As to Improving and Maintaining County Roads.*

Roads or bridges assumed by county councils.

**412.** When a County Council assumes, by By-law, any road or bridge within a Township as a County road or bridge, the Council shall, with as little delay as reasonably may be, and at the expense of the County, cause the road to be planked, gravelled or macadamized, or the bridge to be built in a good and substantial manner; (*b*) and further,

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(*u*) Held not applicable to roads acquired by the County Council by purchase. (*The Queen* v. *Perth*, U. C. C. P. M. T., 1872.) The decision of the Common Pleas in *The Queen* v. *Perth*, though followed, was not cordially acquiesced in by the Queen's Bench in *Hacking* v. *Perth*, U. C. Q. B. E. T., 1873. The latter case has been appealed to the Court of Error and Appeal.

(*v*) See note *s* to sec. 416.

(*a*) By Township boundary line, here mentioned, is intended a road which forms the boundary line of a Township or boundary line between Townships. Such a road may also be the boundary line of a County or a boundary line between Counties. In either event the County Council may do one of two things—assume, make and maintain it, or grant money from time to time for the purpose of making or maintaining it.

(*b*) Power is often conferred on Municipal Councils without the imposition of a duty, in which case the exercise of the power is discretionary. (See *In re Weston Grammar School*, 13 U. C. C. P. 423; *Bell* v. *Crane*, L. R. 8 Q. B. 481; *Hovey* v. *Mayor*, 43 Me. 322; *Benjamin* v. *Wheeler*, 8 Gray, 413.) But here the power is subordinate to the imposition of duty, viz., the Council *shall*, with as little delay as possible, &c. (See note *b* to sub. 45 to sec. 384. "It would seem to be reasonable, when a County Council assumes, by By-law, the exclusive jurisdiction over any road or bridge lying entirely within a Township as a County road or bridge, that the Council should be compelled to improve

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Maintenance of certain bridges in villages.

the County Council shall cause to be built and maintained in like manner all bridges on any river or stream over one hundred feet in width within the limits of any Incorporated Village in the County, necessary to connect any public highway leading through the County. (*c*) 37 V. c. 16, s. 19.

Bridges between municipalities.

**413.** It shall be the duty of County Councils to erect and maintain bridges over rivers forming or crossing boundary lines between two Municipalities (other than in the case of a City or separated Town) within the County, (*m*) and in case of a

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and sustain it at the expense of the County, which is just the very direction the statute makes, otherwise there can be no sense or purpose in the Township being divested of the jurisdiction over its own internal roads." (*Per* Wilson, J., in *Rose and Stormont, &c.*, 22 U. C. Q. B. 531–536.) The County cannot, in the absence of express legislation, cast the obligation of repairing a road or bridge so assumed on the local Municipalities. (*Ib.* 537). "To cast the burden upon the special locality, and to make it provide for the whole general advantage, where it has no power or jurisdiction, and its only privilege is to pay under the dictation of another power, would be as onerous and unreasonable an obligation as can be well conceived," &c. (*Per* Wilson, J., *Ib.* 537.) Nor has the County, in the absence of express legislation, any power to cast upon the local Municipalities the obligation to keep in repair a Township road purchased by the County. (*The Queen* v. *Louth*, 13 U. C. C. P. 615; *The Queen* v. *Perth*, U. C. C. P., M. T., 1872; but see sub. 5 of sec. 440.) It remains to be observed that the obligation under this section is cast on the County only as regards Township roads assumed as County roads, although the power to assume roads in Towns and Villages, with the assent of such Towns and Villages, is now conferred on County Councils. (See note *t* to s. 410.)

(*c*) The latter part of this section was an addition made to sec. 342 of 29 & 30 Vic. cap. 51. It was added by Stat. (Ont.) 34 Vic. cap. 30, s. 8. Before the addition, the County Council could only assume as County roads such roads or bridges as were within Townships, and were under no obligation to keep in repair any bridge within an Incorporated Village. Where such a bridge is across a river over one hundred feet in width, and is necessary to connect the parts of any public highway leading through the County, the obligation to build and maintain it is absolutely cast on the County; and very properly so, for a bridge so situated is really a part of the County road, which by statute is within the exclusive jurisdiction of the County. (Sec. 411; see further, sec. 413, and notes thereto.)

(*m*) A bridge is defined as being any structure of wood, stone, brick or iron, raised over a river, pond or lake for the passage of men and animals. (See *The Queen* v. *Derbyshire*, 2 Q. B. 745; *State* v. *Gorham*, 37 Me. 451; *Sussex* v. *Strader*, 3 Harris (N. J.), 108.) The word "bridge" may embrace under its meaning such abutments as are necessary to make the structure accessible and useful. (*The King* v. *West Riding of York*, 7 East. 596; *Bardwell* v. *Jamaica*, 15 Vt. 438; *Tolland* v. *Wellington*, 26 Conn. 578; *Commonwealth* v.

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bridge over a river forming or crossing a boundary line between two Counties or a County and a City, such bridge shall be erected and maintained by the Councils of the Counties or

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*Deerfield*, 6 Allen, 449.) A bridge is said to be a mere substitute for a ferry. (*Per* Savage, C.J., in *People* v. *Saratoga and Rensselaer Railroad Co.*, 15 Wend. 133.) The duty of repairing bridges in England, in the absence of legislation to the contrary, rested on the County (2 Inst. 700, 701; *The King* v. *West Riding of Yorkshire*, 2 East. 342, 356; *Hill* v. *Livingston*, 12 N.Y. 52; *Follett* v. *People*, *Ib.* 273; *People* v. *Cooper*, 6 Hill. 516); and at common law it was indispensable to the legal character of the bridge repairable by the County, that it should be shown to cross a stream or watercourse. (*The King* v. *Oxfordshire*, 1 B. & Ad. 289; *The King* v. *Salop*, 13 East. 95; *The King* v. *Lindsey*, 14 East. 317; *The King* v. *Northampton*, 2 M. & S. 262.) But these words were held to cover water flowing in a channel between banks more or less defined, even though the channel were occasionally dry. (*The King* v. *Oxfordshire*, 1 B. & Ad. 289; see also *The King* v. *Trafford*, *Ib.* 874; *The King* v. *Whitney*, 3 A. & E. 69; *The King* v. *West Riding of Yorkshire*, 2 East. 342; *The King* v. *Northampton*, 2 M. & S. 262; *The King* v. *Marquis of Buckingham*, 4 Camp. 189; *The King* v. *Devon*, Ry. & M. 144; *The Queen* v. *Derbyshire*, 2 Q. B. 745–756.) Whether the particular structure is a bridge or not, if there be reasonable evidence as to it, is a question for the jury. (*The Queen* v. *Gloucestershire*, 1 C. & M. 506; *Tolland* v. *Willington*, 26 Conn. 578.) The common law responsibility of Counties to repair bridges has never prevailed in the United States. (*Hedges* v. *Madison*, 1 Gilm. 567; *Hill* v. *Livingston*, 12 N. Y. 52; *Huffman* v. *San Joaquin*, 21 Cal. 426.) In some of the States it is imposed by statute on Townships (*Lewis* v. *Litchfield*, 2 Root. 436; *Swift* v. *Berry*, 1 Root, 448; *Lobdell* v. *New Bedford*, 1 Mass. 153; *State* v. *Campton*, 2 N. H. 513; *State* v. *Canterbury*, 8 Fost. (N. H.) 195; *State* v. *Boscawen*, 32 N. H. 331); and in some on Counties (*Wilson* v. *Jefferson*, 13 Iowa, 181; *Freeholders, &c.* v. *Strader*, 3 Harrison, 108). The common law obligation seems to prevail in Ontario, with this qualification, that it is cast upon the local Municipality or the County according to the nature of the structure, position of the bridge, and other surrounding circumstances. (*Harrold* v. *Simcoe and Ontario*, 16 U. C. C. P. 43; s. c., in appeal, 18 U. C. C. P. 9; *The Queen* v. *Yorkville*, 22 U. C. C. P. 431.) It is here by this section expressly declared to be the duty of County Councils to erect and maintain bridges over rivers *forming* or *crossing* boundary lines between two Municipalities in the County, excepting the case of a City or separated Town. (*In re Kinnear and Haldimand*, 30 U. C. Q. B. 398.) The Municipal Council has a discretion as to the place where the bridge should be erected, and must be allowed to some extent to judge of the necessity of such an erection. (*Ib.*; see also *In re Westcott et al. and Peterborough*, 33 U. C. Q. B. 280.) In such a case there can be no mandamus. (*Ib.*; see also *State* v. *Supervisors*, 16 Wis. 613.) Indictment would appear to be the proper remedy in all cases where a Municipality is charged with the non-repair of a road or bridge. (*The Queen* v. *Commissioners of Llandilo Roads*, 2 T. R. 232; *The Queen* v. *Oxford and Whitney Turnpike Roads*, 12 A. & E. 427; *The Queen* v. *Haldimand*, 20 U. C. Q. B. 574; *The Queen*

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County and City respectively; (*n*) and in case the Councils of such County and City, or the Councils of such Counties fail to agree on the respective portions of the expense to be borne by the several Municipalities, it shall be the duty of each Council to appoint Arbitrators, as provided by this Act, to

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v. *Brown and Street*, 13 U. C. C. P. 356; but see *Howe* v. *Crawford County*, 47 Penn. St. 361; *Theat* v. *Middletown*, 8 Conn. 243; *Brander* v. *Chesterfield Justices*, 5 Call (Va.) 548; *People* v. *Supervisors*, 1 Hill. (N. Y.) 50.) A person sustaining special injury, owing to the defective state of a bridge, may sue the Municipality on whom rests the duty to repair. (*Harrold* v. *Simcoe and Ontario*, 16 U. C. C. P. 43; s. c. 18 U. C. C. P. 9; *Richardson* v. *Royalton and Woodstock Turnpike Co.*, 6 Vt. 496; *Gregory* v. *Adams*, 14 Gray, 242; *Dugan* v. *Bridge Co.*, 27 Penn. St. 303; *Patterson* v. *East Bridge in Belfast*, 40 Me. 404.) A bridge may be so constructed over a navigable river, in the absence of legislative authority, as to be a public nuisance. (*The King* v. *West Riding of Yorkshire*, 2 East. 342; *Ex parte Jennings*, 6 Conn. 518; *Arundel* v. *McCulloch*, 10 Mass. 70; *Lansing* v. *Smith*, 4 Wend. 9-24; *Thomas* v. *Leland*, 24 Wend. 65; *Philadelphia* v. *Field*, 58 Pa. St. 320.) But because it may be a nuisance to those navigating the river, it does not follow that those who do not navigate it can complain. (*Fort Plain Bridge Co.* v. *Smith*, 30 N.Y. 44.) A proviso in a charter to erect a bridge over a navigable river, in such a manner as not to injure, stop or interrupt the navigation, is a limitation of the franchise only, but not of the liability to persons injured when navigating. (*Monongahela Bridge Co.* v. *Kirk*, 46 Penn. St. 112.) Such a bridge must, if necessary, be altered to accommodate increased travel. (*Manley* v. *St. Helens Canal and Railway Co.*, 2 H. & N. 840.)

(*n*) A bridge over a stream forming or crossing a boundary line between two local Municipalities is, except in the first part of the section, to be kept and maintained by the County in which situate; but in the case of a bridge over a river forming or crossing a boundary line between Counties, or a County and a City, the obligation is cast on the Councils of the Counties or County and City respectively. This applies whether the bridge was originally constructed by a Municipality or the Crown. The state of repair in which such a bridge was when owned by the Crown, is no measure of subsequent liability. So long as the bridge be kept open, it must be kept reasonably safe for the use of the public. (*Harrold* v. *Simcoe and Ontario*, 16 U. C. C. P. 43; s. c. 18 U. C. C. P. 9.) "This bridge was kept by the defendants as a safe and convenient thoroughfare. The public were invited to use it. They could not tell whether the bridge had been built by the Crown or by the defendants, or who else it was built by; and they could not be required to discriminate as to the relative safety of one bridge over another, because one was built by the Crown and the other by the Municipality. Nor are their rights to be measured, nor their means of redress for injuries sustained to be affected, by the consideration that the defendants were not the builders of the bridge." (*Per* Wilson, J., 16 U. C. C. P. 43-49.)



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determine the amount to be so expended, (*o*) and such award as may be made shall be final. (*p*) 29-30 V. c. 51, s. 341, sub. 12; 34 V. c. 30, s. 13; 37 V. c. 16, s. 19.

*Township Roads, and Maintaining.*

Boundary lines not assumed by county council.

**414.** All Township boundary lines (*q*) not assumed by the County Council shall be opened, maintained and improved by the Township Councils. 29-30 V. c. 51, s. 341, sub. 1.

Township boundaries, being also county boundaries.

**415.** Township boundary lines forming also the County boundary lines, (*r*) and not assumed or maintained by the respective Counties interested, shall be maintained by the respective Townships bordering on the same. 29-30 V. c. 51, s. 341, sub. 7.

*Roads under Joint Jurisdiction.*

Joint jurisdiction over certain roads.

**416.** In case a road lies wholly or partly between a County, Town, City, Township or Incorporated Village, and an adjoining County or Counties, Town, City, Township, or

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(*o*) See sec. 279, *et seq.*

(*p*) "Shall be final." See notes to sec. 61 of the Assessment Act.

(*q*) By "Township boundary *line*" is probably meant a road forming a Township boundary. This (if not assumed by the County Council) is to be opened, maintained and improved by the Township Councils. All roads dividing *different* Townships are under the exclusive jurisdiction of the County Council, whether assumed by By-law or not. (Sec. 410.) If this section is to be looked upon as extending to roads dividing different Townships and so forming a boundary to each, the words "exclusive jurisdiction," as used in sec. 410, are not to be deemed to include any obligation on the County to open, maintain or improve the roads. The object of the section is, as much as possible, to relieve Counties of the burden of keeping roads in repair, and throw that burden upon the local Municipalities adjacent thereto. The wisdom of such a policy is doubtful. To cast the burden upon a particular locality of keeping in repair a County road, used by the whole County, seems unfair and unreasonable. (See remarks of Adam Wilson, J., in *Rose and Stormont*, 22 U. C. Q. B. 587; see further, note *m* to sec. 413.)

(*r*) Roads forming Township boundary lines, when *not* forming County boundary lines, are to be opened, maintained and improved by the Township Councils; but when forming County boundary lines they are, unless assumed by the Counties, to be under the operation of this section, maintained "by the respective Townships bordering on the same." Between the two sections there appears to be some distinction without much difference. A different policy prevails as to bridges forming a boundary line between two Counties. (See sec. 413.)

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Incorporated Village, (*s*) the Councils of the Municipalities between which the road lies shall have joint jurisdiction over the same, (*t*) although the road may so deviate as in

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(*s*) In case a road lies *wholly* or *partly between* a County, &c., and an adjoining County, &c. A road situate wholly *within* a City, Town, Township or Incorporated Village, is vested in the local Municipalities. (Sec. 407.) "When, therefore, the defendants assert that the road in question is a County road, properly constituted such under the provisions of the statute, they are asserting that to be the case which we see *could not be*." (*Per* Burns, J., in *St. George's Church* v. *Grey et al.*, 21 U. C. Q. B. 265–268.) When is a road to be said to lie wholly *between* a County, &c., and an adjoining County, &c.? Does the word "between" mean that the road separates the two Municipalities, so that a traveller might go along it being in neither one Municipality nor the other? Such was the interpretation given to the 39th section of 12 Vic. cap. 81, in *Woods* v. *Wentworth and Hamilton*, 6 U. C. C. P. 101. And such appears to be the interpretation of this section. (*Per* Draper, C. J., in *Harrold* v. *Simcoe and Peel*, 18 U. C. C. P. 10.) "When you speak of something lying between two other places or things, you mean, in the accurate use of language, something lying between the boundaries or limits of the other two places or things—something dividing them," &c. (*Per* Vankoughnet, C., *Ib.* 15.) When is a road to be said to be *partly* between two Municipalities? This question can be best answered by a decided case. A road had for more than fifty years been used as a road between the Townships of York and Vaughan, the original allowance for road being to the north of it, and this road being in fact wholly within the Township of York, and part of lot 25. The owner of the lot had been indicted for closing up this road and convicted in 1870. The Corporation of the Township of York then passed a By-law to close it, reciting that there was no further necessity for it by reason of the road allowance. *Held*, that the road was one dividing the Townships, and, though in fact wholly within the Township of York, could not be legally closed by the Council of that Township. (*In re McBride and York*, 31 U. C. Q. B. 355.) The section applies where the deviation has been made to obtain a good line of road—not in order to suit the convenience of either Municipality. (*Per* Robinson, C. J., *In re Brant and Waterloo*, 19 U. C. Q. B. 450.)

(*t*) It is doubtful if the words used in this section, conferring joint jurisdiction, standing by themselves, mean anything more than that the Municipalities jointly interested are to concur in any regulation necessary to be applied to the road or bridge in regard to tolls or otherwise. (*In re Brant and Waterloo*, 19 U. C. Q. B. 450; see further, note *t* to sec. 410.) But the words "duties" and "liabilities," used in sec. 418, may be held to give a more extended meaning to them. If they mean more, so as to render the Corporation liable for neglect to repair, the obligation must be proved as laid. (*Wood* v. *Wentworth and Hamilton*, 6 U. C. C. P. 101.) That the words do mean more would appear to follow from the decision in *Harrold* v. *York and Ontario*, 16 U. C. C. P. 43; s. c. 18 U. C. C. P. 9, if that case be taken as determining the liabilities, under the statute, of the Corporations there sued.

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some places to be wholly or in part within one or either of them, (*u*) and the said road shall include a bridge forming part of the road. (*v*) 33 V. c. 26, s. 8.

Both councils must concur in by-laws respecting them.

**417.** No By-law of the Council of any one of such Municipalities, with respect to any such last mentioned road or bridge, (*w*) shall have any force until a By-law has been passed in similar terms, as nearly as may be, by the other Council or Councils having joint jurisdiction in the premises. (*x*) 33 V. c. 26, s. 9.

Arbitration if they do not concur.

**418.** In case the other Council or Councils, for six months after notice of the By-law, (*y*) omit to pass a By-law or By-laws in similar terms, the duty and liabilities of each Municipality in respect to the road or bridge shall be referred to arbitration under the provisions of this Act. (*z*) 33 V. c. 26, s. 10.

*Transfer of Powers of Justices in Sessions.*

Certain powers of Justices in Sessions transferred to county councils.

**419.** All powers, duties and liabilities which, at any time before the first day of January, one thousand eight hundred and fifty, belonging to the Magistrates in Quarter Sessions, with respect to any particular road or bridge in a County, and not conferred or imposed upon any other Muni-

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(*u*) See note *s* to this section.

(*v*) Much difficulty was created owing to the language used in the section as formerly framed (29 & 30 Vic. cap. 51, s. 329). It was held, when the words used were "In case a road or bridge lies," &c., that each was a nominative case, and that the Act did not apply to the case of a bridge *forming part* of a road. (*In re Brant and Waterloo*, 19 U. C. Q. B. 450; see differences of opinion on the point between the late Chancellor and the President of the Court of Appeal, in *Harrold* v. *Simcoe and Ontario*, 18 U. C. C. P. 10–17.) The original Act was in this respect first amended by 33 Vic. cap. 26, ss. 1 & 8, by striking out the words "or bridge." (See *Beaver* v. *Manchester*, 26 L. J. Q. B. 311.)

(*w*) *i. e.* a road lying wholly or partly between a County, Town, City, Township or Incorporated Village, and an adjoining County, &c., or a bridge forming part of a road. (See notes *s* and *v* to sec. 416.)

(*x*) "Joint jurisdiction." (See note *t* to sec. 416.)

(*y*) It would be well for the Municipal Council first passing the By-law and requiring the other Municipal Council to do so, to serve the latter with a copy of the By-law. That would be the best notice of the same. Six months are allowed to the Council of the latter Municipality, within which to pass a By-law in similar terms.

(*z*) Whether or not the Arbitrators have power in respect to a bridge, to direct when and at what cost the bridge shall be built, and to compel the respective Municipalities to contribute, is doubtful. (*In re Brant and Waterloo*, 19 U. C. Q. B. 450.)

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cipal Corporation, shall belong to the Council of the County, or in case the road or bridge lies in two or more Counties, to the Councils of such Counties; (*a*) and the neglect and disobedience of any regulations or directions made by such Council or Councils, shall subject the offenders to the same penalties and other consequences as the neglect or disobedience of the like regulations of the Magistrates would have subjected them to. 29-30 V. c. 51, s. 343.

*Roads under Board of Works not affected.*

Roads, &c., as provincial works vested in Her Majesty, &c., not to be interfered with.

**420.** No Council shall interfere with any public road or bridge vested as a Provincial work in Her Majesty, or in any public Department or Board, (*b*) and the Governor shall by order in Council have the same powers as to such road and bridge as are by this Act conferred on Municipal Councils with respect to other roads and bridges; (*c*) but the Governor may by proclamation declare any public road or bridge under the control of the Commissioner of Public Works, to be no longer under his control; (*d*) and in that

Proclamation by Governor as to roads, &c. under control of commissioner of public works.

(*a*) This section is not to be understood as *limiting* the responsibility of Counties to just the same measure of responsibility to which Magistrates in Quarter Sessions were subjected. This is not the purpose of the clause. It is a transfer clause or clause of conveyance from the Magistrates to the County Councils of all the powers, &c.; and on the completion of such transfer the Councils are to hold the property operated upon in like manner and subject to the general duties and liabilities applicable to their other property. The section, it will also be seen, applies only to such *particular* roads and bridges as were not conferred or imposed on any other Municipal Council; but it is difficult to say what roads or bridges can be within it, when sections 406, 407 and 410 have already conferred or imposed every road and bridge upon some Municipality, excepting those Government works specially exempted under section 420. The section under consideration was, it is presumed, inserted *ex abundanti cautela*, and not because there was any case or special property upon which it can really operate. (*Per* Adam Wilson, J., in *Harrold* v. *Simcoe and Ontario*, 16 U. C. C. P. 50, 51.)

(*b*) Every public road, with few exceptions, is vested in the Municipality in which situate. (Sec. 407.) Among the exceptions may be classed roads coming under the operation of this section, viz., public roads, &c., vested as Provincial works in Her Majesty, or in any public Department or Board, such as the Department of Public Works.

(*c*) There is a difference between a power and an obligation. (See note *b* to sec. 412.) The Corporation in which a public road is vested is not only empowered to keep it in repair, but is bound to do so. (Sec. 409.) The power, without the obligation, is here conferred upon the Governor in Council.

(*d*) Such a proclamation was presumed in an action to recover damages for non-repair, where the local Municipality was shown to

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case, after a day named in the proclamation, the road or bridge shall cease to be under the control of the Commissioner, and no tolls shall be thereafter levied thereon by him, and the road or bridge shall thenceforth be controlled and kept in repair by the Council of the Municipality. (*e*) 29-30 V. c. 51, s. 318.

*Nor Roads on Dominion Lands.*

Ordnance roads, lands, &c., not to be interfered with.

**421.** No Council shall pass any By-law; (*f*) (1) for stopping up or altering the direction or alignment of any street, lane or thoroughfare made or laid out by Her Majesty's Ordnance, or the Principal Secretary of State, in whom the Ordnance Estates became vested under the statute of the Province of Canada, passed in the nineteenth year of Her Majesty's reign, chapter forty-five, or the Consolidated Statute of Canada, chapter twenty-four, respecting the Ordnance and Admiralty lands, or by the Dominion of Canada; (*g*) or

19 V. c. 45, Con. Stat. Can. c. 24.

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have used the road as a road vested in them. (*Irwin* v. *Bradford*, 22 U. C. C. P. 18; s. c., *Ib.* 421.)

(*e*) Suppose the public way to be a bridge, and that bridge crossing a stream which is a boundary line between two Counties, but not in either of them, on whom devolves the obligation to keep such a bridge in repair after it ceases to be under the control of the Commissioners of Public Works? In *Harrold* v. *Simcoe and Ontario* 16 U. C. C. P. 43; s. c., 18 U. C. C. P. 9, the obligation was held to rest on the Corporations of the two Counties. "I think that, looking at the question before us, we may properly give to the word 'between,' the popular rather than the more limited, though possibly more rigidly correct sense; and that when a bridge is constructed over navigable waters, and connects two opposite shores lying in different Counties, we should hold such a bridge to be between such two Counties, and that they are jointly answerable for its maintenance, even though the Counties, as respectively containing the Townships between the shores of which the current flows, reach to the middle of the water, and are divided only by the invisible, untraceable line called *medium filum aquæ*." (*Per* Draper, C. J., in *Harrold* v. *Simcoe et al.*, 18 U. C. C. P. 13.)

(*f*) The power to legislate as to Municipal institutions in the Province is by the B. N. A. Act, s. 92, sub. 8, vested in the Legislature of each Province. But whether a public work be vested in Her Majesty as representing the Province, or the Dominion (see *Attorney-General* v. *Harris*, 33 U. C. Q. B. 94), it is equally beyond the power of a local Municipal Act to interfere with or control it without the consent of the Queen. The previous section (sec. 420) makes such a declaration, in reference to Provincial works, vested in Her Majesty. This has reference to Dominion works and Dominion property.

(*g*) The object of this part of the section is to protect roads, &c., laid out through Ordnance lands. The Ordnance Transfer Act of 1856 divided Ordnance lands into two schedules; the first schedule

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(2) for opening any such communication through any lands held by the Dominion of Canada; or (3) (*h*) interfering with any bridge, wharf, dock, quay or other work vested in the Dominion of Canada; (*i*) or (4) interfering with any land reserved for military purposes, or with the integrity of the public defences, without the consent of the Government of the Dominion of Canada; (*j*) and a By-law for any of the purposes aforesaid shall be void unless it recites such consent. (*k*) *Vide* 29-30 V. c. 51, s. 319.

By-law without consent of Dominion, &c., and not reciting consent, to be void.

*Roads Necessary for Egress not to be Closed.*

**422.** No Council shall close up any public road or highway, whether an original allowance or a road opened by the Quarter Sessions, or any Municipal Council, or otherwise legally established, whereby any person will be excluded from ingress and egress to and from his lands or place of residence over such road, (*l*) unless the Council, in addition

Council not to close road required by individuals for ingress &c.

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comprising all lands vested in one of Her Majesty's Principal Secretaries of State, and the second such lands as are reinvested in the Crown for the public uses of the Province. (See Con. Stat. C. cap. 36.)

(*h*) See preceding note.

(*i*) The following public works, belonging to the late Province of Canada, are by the B. N. A. Act declared to be the property of the Dominion of Canada:

1. Canals, with lands and water power connected therewith;
2. Public Harbours;
3. Lighthouses and Piers;
4. Steamboats, Dredges and Public Vessels;
5. Rivers and Lake Improvements;
6. Railways and Railway Stocks, Mortgages and other Debts due by Railway Companies;
7. Military Roads;
8. Custom Houses, Post Offices, and all other Public Buildings, except such as the Government of Canada appropriate for the use of the Provincial Legislatures and Governments;
9. Property transferred by the Imperial Government, and known as Ordnance Property (see note *g* to this section);
10. Armouries, Drill Sheds, Military Clothing and Munitions of War, and Lands set apart for public general purposes. (B. N. A. Act, s. 108, sch. 3.)

(*j*) No Council has power to pass any such By-law as mentioned without the consent of the Government of the Dominion of Canada: in other words, the proper Council has the power with the consent. The consent being essential to a valid exercise of the power, it is declared that the By-law shall be void unless it recite such consent.

(*k*) See preceding note.

(*l*) The power of a Municipal Council to close up a highway is subject to certain limitations. One of these, under this section, is

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to compensation, shall also provide for the use of such person some other convenient road or way of access to his said lands or residence. (*m*) 29-30 V. c. 51, s. 320.

*Width of Roads.*

Width of roads.

**423.** No Council shall lay out any road or street more than one hundred nor less than sixty-six feet in width, excepting when an existing road or street is widened, or unless with the permission of the Council of the County in which the Municipality is situate; but any road, when altered, may be of the same width as formerly, and no highway or street shall be laid out by any owner of land of a less width than sixty-six feet (*n*) without the consent of

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against doing so in the case of a road "whereby any person will be excluded from ingress and egress to and from his lands or place of residence over such road." "The Legislature says in effect, 'You must not stop up any road whereby any person will be excluded from ingress or egress to and from his lands or place of residence *over such road.*' If, then, such a road be stopped, most certainly all persons must be excluded from ingress and egress to or from their lands *over that road.* There can be no ingress or egress over a stopped-up road. Therefore, I presume, all persons who come into their lands directly from that road, or pass from their lands directly on to that road, are to be protected. This would leave all persons who merely used the road as *a convenience*, but had no lands abutting thereon, from or to which ingress or egress would be effected, without the protection of the clause." (*Per* Hagarty, C. J., in *Moore and Esquesing*, 21 U. C. C. P. 277–285.) The Court will not, on the application of a person who merely used the road as a convenience but had no lands abutting thereon, quash a By-law for alleged contravention of this section. (*In re Falle and Tilsonburg*, 23 U. C. C. P. 167.)

(*m*) Section 320 of 29 & 30 Vic. cap. 51, concluded—"But all such roads shall remain open for the use of the person who requires the same." These words are omitted from the section here annotated. In place of them are the words "unless the Council, in addition to compensation, shall also provide for the use of such person some other convenient road or way of access to his said lands or residence." The effect of the amendment is to permit a Council to close up such a road as mentioned in the first part of the section, provided compensation be paid to the persons directly affected and a substituted road or way of access be provided. In Indiana it has been held that a Municipal Corporation cannot close up a street in front of land owned by private individuals without the consent of landowners whose land abuts thereon, or compensating them for the damage. (See *Haynes* v. *Thomas*, 7 Ind. 38; *Indianapolis* v. *Croas*, *Ib.* 9; *Tate* v. *Ohio and Mississippi Railroad Co.*, *Ib.* 479–483.)

(*n*) The object of this section is to make all highways at least sixty-six feet, or one chain, in width. A maximum width of one hundred feet is also given. A By-law opening a new road should

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the Council of the Municipality. (*o*) *Vide* 29-30 V. c. 51, s. 322.

*Notices Requisite for By-laws affecting Public Roads.*

Conditions precedent to passing by-law intended to affect public roads.

**424.** No Council shall pass a By-law for stopping up, altering, widening, diverting or selling any original allowance for road, (*p*) or for establishing, opening, stopping up, altering,

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on the face of it show the width of the road (*In re Smith and Euphemia*, 8 U. C. Q. B. 222), and should, it seems, when it authorizes a road through a man's land, show where it enters and what course it takes. (*Dennis* v. *Hughes et al.*, *Ib.* 444.) All By-laws authorizing new roads should, either by reciting the whole description of the road given in the survey or report, or by describing it fully, whether such By-laws refer to the report or not, make it plain to to every one that sees the By-laws where the road is to run and how wide it is to be, and should not leave the information to be gleaned from documents not referred to in the By-laws as annexed and not in fact annexed. (*In re Brown and York*, *Ib.* 596; *McIntyre* v. *Bosanquet*, 11 U. C. Q. B. 460.) The same strictness does not of course apply to a By-law closing up an old road. (*Fisher* v. *Vaughan*, 10 U. C. Q. B. 492.) Where the road was not sufficiently described, but it appeared that on the ground it was defined by fences on each side, and had been travelled for eight years, the Court refused to quash the By-law. (*Hodgson* v. *York, Peel and Ontario*, 13 U. C. Q. B. 268.) The public are *prima facie* entitled to the use of the entire width as a highway. (See note *p* to sec. 409.)

(*o*) The standard width is sixty-six feet; but, with the consent of the Municipality, an owner of land may lay out a road of less width. The consent ought to be evidenced by some official act of the Council as a body—such as a By-law or resolution.

(*p*) The declaration that no Council shall pass a By-law until, &c., enables the Council to pass the By-law subject to the conditions imposed. The powers here inferentially conferred are *for*—

1. Stopping up;
2. Altering;
3. Widening;
4. Diverting; or,
5. Selling—

Any *original allowance* for road;

*And for*—

1. Establishing;
2. Opening;
3. Stopping up;
4. Altering;
5. Widening;
6. Diverting; or,
7). Selling—

Any *other* public highway, road, street or lane.

These powers are directly conferred by sec. 425, sub. 1.

It was at one time supposed that a Municipal Council could not in any case legally close up or vacate a road, except for the purpose and with the view of substituting some other line of road in its place. (See

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widening, diverting or selling any other public highway, road, street or lane; (*q*)

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*Welch* v. *Nash*, 8 East. 394; *De Ponthieu* v. *Pennyfeather*, 5 Taunt. 634; *Wright* v. *Frant*, 4 B. & S. 118; *The Queen* v. *Shiles*, 1 Q. B. 919; *The Queen* v. *Phillips*, L. R. 1 Q. B. 648.) But the Court, in *Johnston* v. *Reesor et al.*, 10 U. C. Q. B. 101, refused to give effect to such a construction, saying "Here was a road, first allowed at an early period as a mere accommodation to the immediate neighbours for enabling them to pass through private property by a short road from one concession to another, instead of going round by the nearest public allowance, where the ground might have been wet or unfavourable. It may be very reasonable afterwards, when the Township becomes cleared and populous, and roads can be made more easily, to relieve the proprietor of the land from the disadvantage of having a thoroughfare through his property, and to leave only the public allowance." (*Per* Robinson, C. J., *Ib.* 103-104; see also *The Queen* v. *Plunkett*, 21 U. C. Q. B. 536; *Moore and Esquesing*, 21 U. C. C. P. 277.) This is supposing the owners of the land abutting thereon to be willing that the road should be so closed. But if the effect of closing the road will be to prevent such owners from ingress and egress to and from their lands or places of residence over the road, the same cannot be closed without compensation to them, and some other road or way of access as a substitute. (Sec. 422.) Subject to this and other statutable restrictions, the Municipal Corporation has full power to close up highways within the Muncipality. (See *Gray* v. *Iowa Land Co.*, 26 Iowa, 387; *Kimball* v. *Kenosha*, 4 Wis. 321; *Stuber's Road*, 28 Penn. St. 199; *Commissioners* v. *Gas Co.*, 12 Penn. St. 318; *Jersey City* v. *State*, 1 Vroom. (N. J.) 521; *Trenton Railroad Case*, 6 Whart. 25; *Bailey* v. *Philadelphia, Wilmington and Baltimore Railroad Co.*, 4 Harring. (Del.), 389; *Hinchman* v. *Detroit*, 9 Mich. 103.) It has been held that a Municipal Corporation, under power "to locate and establish streets and alleys, and *vacate* the same," had power to shut up or vacate streets, and that such a power, when exercised with a due regard to individual rights, is not to be restrained at the instance of property owners claiming that the streets be for ever kept open as dedicated to the public. (*Gray* v. *Iowa Land Co.*, 26 Iowa, 387; distinguished from *Warren* v. *Lyons*, 22 Iowa, 351.) If no other disposition were made of the stopped-up road, the soil and freehold would be and become the soil and freehold of the owner of the soil relieved of the easement in favour of the public. (*Barclay* v. *Howell's Lessee*, 6 Pet. 498, 513; *Harris* v. *Elliott*, 10 Pet. 25.) The conveying away the land to another, where the Corporation has authority to do so, is a distinct matter altogether, and not necessary to the extinction of the public right of way. (*Johnston* v. *Reesor et al.*, 10 U. C. Q. B. 101.) Counties have, in certain cases, power to stop up highways and convey the right of way (sec. 440); and Townships in certain cases, subject to the confirmation of the County Council. (Secs. 424, 441, sub. 2.)

(*q*) It ought to be observed that notice is requisite, not only before a Council shall pass a By-Law, for stopping up, altering, widening, diverting or selling any original allowance," but "for establishing, *opening*, stopping up, altering, widening, diverting or selling any

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(1.) Until written or printed notices of the intended By-law have been posted up one month previously in six of the most public places in the immediate neighbourhood of such original allowance for road, street or other highway, road, (*r*) Notice to be posted up.

other public highway, road, street, or lane." Under the old Acts it was held that no notice was necessary before passing a By-law to open a new road; the clause then in force only applying to By-laws "for stopping up, altering, widening or diverting a road," &c. (*Dennis* v. *Hughes et al.*, 8 U. C. Q. B. 444.) It was at one time contended that the Municipal Councils had only authority to change the direction of existing roads, and to widen or otherwise alter them, not to make *new* roads; but it is now settled that such Councils have power to make new roads through any person's lands, not merely as substitutes for other roads running near and between the same points, but to afford a passage from one point to another where there has been no passage before. (*Ib.*) It seems that a road is not made, &c., when a By-law authorizing the making of it is passed, but only that it is authorized to be made, &c., by the proper officer acting in a reasonable manner. (*Ib.*) As to stopping up, &c., it is not necessary for the Council to do more than close or abolish the highway by their enactment. They are not required to fence it in, or to place any physical obstruction in the way of persons passing. They only put an end to the right of using it, and consequently to all obligation on the part of any person to respect it as a highway. (*Johnston* v. *Reesor et al.*, 10 U.C. Q.B. 101.)

(*r*) The Court, on an application to quash a By-law, will assume that the Council have acted regularly in their preliminary proceedings till the contrary be shown. (*In re Lafferty and Wentworth and Halton*, 8 U. C. Q. B. 232; *Fisher* v. *Vaughan*, 10 U. C. Q. B. 492.) It would be well, however, that the Corporation should in every case preserve proof of regular notices by affidavit of the person employed to put them up. (*Per* Robinson, C. J., *In re Lafferty and Wentworth and Halton*, 8 U. C. Q. B. 235.) Where applicant, attacking a By-law, ventured to go no further than file an affidavit of a person who said he had no recollection of seeing any notice, without asserting his belief that due notice had not been given, or taking any means whatever to ascertain whether or not the notices were put up, the Court refused to interfere. (*Fisher* v. *Vaughan*, 10 U. C. Q. B. 492.) So where applicant did not positively negative any notices having been put up, the Court refused to interfere, although the Municipal Council did not prove that six notices were put up. (*Parker* v. *Pittsburgh and Howe Island*, 8 U. C. C. P. 517; see also *In re Baker et al. and Saltfleet*, 31 U. C. Q. B. 386.) It is not necessary that such notices should be framed with such particularity as to require recourse to be had to a lawyer before framing them. (See *The Queen* v. *Powell*, L. R. 8 Q. B. 403.) To a declaration in trespass *quare clausum fregit*, the defendant filed several pleas, justifying the trespass as done by him as servant of the Municipal Council of the United Counties of Wentworth and Halton, and by their command, in pursuance of a By-law passed on the 31st January, 1850, in accordance with the provisions and requirements of the Municipal Act of 1849, which came into force on 1st January, 1850. *Held* on demurrer that it was a valid objection to the several pleas, that they did not show a calendar month's notice given previous to the passing

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street or lane, and also for permitting subways for cattle under any highway; (*s*)

and published in newspaper.

(2.) And published weekly for at least four successive weeks in some newspaper (if any there be) published in the Municipality; or if there be no such newspaper, then in a newspaper published in some neighbouring Municipality; (*t*) and, in either case, in the County Town, if any such there be;

Parties prejudicially affected to be heard.

(3.) Nor until the Council has heard, in person or by counsel or attorney, any one whose land might be prejudicially affected thereby, and who petitions to be so heard; (*u*)

Clerk to give the notices, on payment of expenses.

(4.) And the Clerk shall give such notices, at the request of the applicant for the By-law, upon payment of the reason-

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of the By-law; that on the contrary they imported on the face of them that it could not have been given, because the By-law was passed within a month after the Municipal Act of 1849 came into operation. (*Lafferty* v. *Stock*, 3 U. C. C. P. 1.)

(*s*) This enabling clause appears to have been thrust in here by a sort of "leap in the dark." It is quite foreign to the subsection of which it is made to form an awkward part; but, read by itself, is quite intelligible. The power is to permit subways to be made for cattle. A subway is a way or passage under a highway. Being designed merely for the use of cattle, pedestrians would not have a right to use such a way for ordinary travel, so as to hold the Corporation responsible for accidents arising from non-repair. (See note *p* to sec. 409.)

(*t*) It will be observed that the statute does not fix any number of insertions of the By-law in a newspaper, but the publication weekly for a fixed period, viz., "at least four successive weeks." If, therefore, the final publication be on a Saturday, that week would expire on the following Friday, and so for each successive week. A notice first published on Thursday, the 12th January, for Tuesday, the 7th February, was held not to be a publication for "four consecutive weeks." (*In re Coe and Pickering*, 24 U. C. Q. B. 439; see also *In re Miles and Richmond*, 28 U. C. Q. B. 333.)

(*u*) Where applicant, being aware of the day of the passing of the By-law, gave notice that he intended opposing the same, but took no further steps in opposition until making an application to the Court to quash the By-law, his rule was discharged. (*Parker* v. *Pittsburgh and Howe Island*, 8 U. C. C. P. 517.) Where the persons intending to oppose a By-law to open a road appeared before the Council and took only general grounds of opposition, the Court afterwards, when he applied to quash the By-law on grounds more specific, declined to interfere. (*In re Scarlett and York*, 14 U. C. C. P. 161.) Before paying money for land, required for the purposes of a highway, investigation should be made into the title. A mortgagee was held entitled to compel payment in Equity of the compensation, although the Township Council had previously, in ignorance of the mortgage, paid the amount to an attaching creditor of the mortgagor. (*Dunlop* v. *York*, 16 Grant, 216.)

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able expenses attendant on such notices. (*v*) *Vide* 29-30 V. c. 51, s. 323.

**425.** The Council of every County, Township, City, Town and Incorporated Village may pass By-laws: By-laws may be made for—

*General Powers.*

(1.) For opening, making, preserving, improving, repairing, widening, altering, diverting or stopping up roads, streets, squares, alleys, lanes, bridges or other public communications within the jurisdiction of the Council, (*a*) and Opening or stopping up roads, &c.

(*v*) The right of the Clerk is to exact "the reasonable expenses attendant on such notices." The Municipality has no right to throw the expense of opening an ordinary road on the petitioners (*Lafferty* v. *Stock*, 3 U. C. C. P. 1.); but a By-law directing the occupants of an original allowance for road to open the same at their own expense held not to be illegal. (*In re McMichael and Townsend*, 33 U. C. Q. B. 158.) Where it is the clear duty of a Municipal Council to make a road, the Court may grant a mandamus to compel the performance of that duty. (*In re Augusta and Leeds and Grenville*, 12 U. C. Q. B. 522.) The Council, in opening a road, must act by By-law. (*The Queen* v. *Rankin*, 16 U. C. Q. B. 304.)

(*a*) It is by section 424 enacted that *no Council* shall pass a By-law for stopping up, altering, widening, diverting or selling *any original allowance* for road, or for establishing, opening, stopping up, altering, widening, diverting or selling any *other* public highway, road, street or land, until, &c. This subsection expressly empowers the Council of every County, Township, City, Town or Incorporated Village—in other words, *every Council*—to pass By-laws for the following purposes:

(1.) Opening;
(2.) Making;
(3.) Preserving;
(4.) Improving;
(5.) Repairing;
(6.) Widening;
(7.) Altering;
(8.) Diverting;
(9.) Stopping up;

Roads, streets, squares, alleys, lanes, bridges or *other* public communications.

Each of these words convey a distinct idea and a distinct power, as it were, growing out of and becoming necessary in consequence of the preceding power. It is of little use to *open* a street unless it be *made*, little use in *making* it unless to be *preserved*, little use in *preserving* it with growth of population unless *improved*, little use *improving* it unless to be *kept in repair;* and necessary, perhaps, owing to change of circumstances, to *widen*, *alter* or *divert* it, or, in the public interest, proper to *stop it up*.

As to the meaning of similar words, see *Welch* v. *Nash*, 8 East. 394; *De Ponthieu* v. *Pennyfeather*, 5 Taunt. 634; *The Queen* v. *Shiles*, 1

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for entering upon, breaking up, taking or using any land in

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Q. B. 919; *Wright* v. *Frant*, 4 B. & S. 118; *The Queen* v. *Phillips*, L. R. 1 Q. B. 648.

Municipal Corporations are empowered not only to change the direction of existing roads, but to open new roads (see note *q* to sec. 424); and, subject to certain limitations, empowered to stop up existing roads without substituting new roads (see note *p* to sec. 424); and are obliged, under penalties civil and criminal, to keep all existing roads in repair (see sec. 409).

The statute 12 Vic. cap. 81, s. 60, empowered Municipal Corporations to pass By-laws not only for opening, making, preserving, improving, repairing, widening, altering and diverting streets, but for *levelling*, *raising* and *lowering* them, and omitted in any manner to provide for payment of compensation to persons whose land was injuriously affected by the exercise of these powers; and so it was held that such persons could not at law maintain actions for damages arising to their property from a change of level in the streets. *Croft* v. *Peterborough*, 5 U. C. C. P. 35; *Reid* v. *Hamilton*, *Ib.* 269; *The Queen* v. *Perth*, 14 U. C. Q. B. 156.) No such words are used in this section. (See, however, sec. 429, and sec. 441, sub. 1.) The effect of the omission of levelling, raising and lowering from the enumerated powers conferred on a Municipal Corporation under this section, has not been before the Courts for decision. Whether power to widen, alter, divert and repair streets would not include power to change the level of streets, is the question. Macaulay, C. J., in *Croft* v. *Peterborough*, 5 U. C. C. P., 45, said, "I am at present disposed to think it within the general and incidental powers of the defendants to maintain, repair and improve the public streets of the town placed under their charge, and in doing so to raise or lower them as may be found necessary, judicious or convenient for the public use, not exceeding what is reasonably requisite and proper, and doing no unnecessary injury to the property of others, but using due care and precaution to avoid injury to the same. But if the work cannot be justified on such grounds, then, in the absence of *any by-law*, I think the defendants would be responsible to the injured parties." Again he says, "Whatever is cast upon the defendants as *executive* duties, under the statutes in relation to the maintenance or repair of the roads, or whatever is fairly included in those terms, they may do without a By-law. When not so, and it is only within their discretion in the exercise of their *legislative* powers, it would be otherwise." In *Reid* v. *Hamilton*, 5 U. C. C. P. 287, he said, "My present impression is, that whenever the acts to be done by the Municipality will invade private rights, *which may be so invaded legally* through the medium of By-laws, and for which, if not legalized by the statutes creating or the powers conferred upon the Corporation, the party injured may maintain an action against the wrong-doer, a By-law is essential to enable the Municipality to justify the act, unless it can be shown to be repair of a highway, &c." The Council of a City, Town or Incorporated Village has power to pass By-laws for ascertaining and compelling owners, tenants and occupants to furnish the Councils with the levels of their cellars, such levels to be with reference to a line fixed by the By-laws (sec. 384, sub. 47); and before commencing the erection of any new

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any way necessary or convenient for the said purposes, sub-

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building, to deposit a plan of the building, with the levels of the cellars and basements thereof. (*Ib.* sub. 48.) But no power now exists in express terms to change the level of a street to the prejudice of owners of land abutting thereon. The general rule is, that when private rights are interfered with for the public advantage, compensation is given. (See sec. 373, and notes thereto.) In a recent case, where a person was complaining of an injury to his property by reason of a change in the level of the street, Kelly, C. B., said, "I cannot but observe, in a case like this, that whenever it appears that the case is one in which it is plain that very serious injury may have been done to the premises of the party claiming compensation, I think that we must put a liberal construction upon the Acts of Parliament before us in determining the points raised. Unless it is perfectly clear that the language of the different Acts is not sufficiently ample or extensive to embrace the case in question, we ought to hold that a party whose property is injuriously affected, and to a very great extent by the operations of a public body, *shall be entitled in a court of law to compensation.*" (*The Queen* v. *St. Luke's*, L. R. 7 Q. B. 148–153; see further, *Bigg* v. *London*, L. R. 15 Eq. 376.) This is in accordance with the decisions of our courts in several cases, where the complaint was that the plaintiff's land was flooded by municipal corporations, in their efforts to drain, and so keep in repair, public highways vested in them. (*Brown* v. *Barnia*, 11 U. C. Q. B. 87; *Perdue* v. *Chinguacousy*, 25 U. C. Q. B. 61; *Rowe* v. *Rochester*, 29 U. C. Q. B. 590; *Stonehouse* v. *Enniskillen*, 32 U. C. Q. B. 562; *Rowe* v. *Rochester*, 22 U. C. C. P. 319.) In the last mentioned case, Hagarty, C. J., said, "No power is conferred upon them (the corporation) to do any such injurious act. No provision is made for compensating any person injured by this performance of their statutable duties. In the absence of any such power, it seems to us impossible to accede to the defendants' argument. It may be quite possible that the defendants have the right to raise or lower the level of this road, and that no remedy is given to persons injured or inconvenienced thereby. But it is a totally different matter when the acts complained of amount to an interference with the natural flow of the water, or to the gathering of scattered waters into one course, and causing them to flow upon adjoining lands. The question, however, seems not open to discussion unless a Court of Error interpose." (*Ib.* 320.) In *Callender* v. *Marsh*, 1 Pick. 417, it was said that those who purchase house lots bordering upon streets are supposed to calculate the chance of such elevations and reductions as the increasing population of the city may require, &c. This case has been approved in the courts of every State of the Union except one. (*Per* Randal, C. J., in *Dorman* v. *Jacksonville*, 7 Am. Rep. 253.) In the United States, therefore, it is generally held that a municipal corporation is not responsible, unless expressly so declared by statute, for mere consequential damages resulting from a change of grade in a street where there is no negligence in the doing of the work. (*Green* v. *Reading*, 9 Watts, 382; *O'Connor* v. *Pittsburgh*, 18 Penn. St. 187; *Radcliff's Executors* v. *Brooklyn*, 4 Comst. (N. Y.) 195; *Graves* v. *Otis*, 2 Hill, 466; *Hoffman* v. *St. Louis*, 15 Mo. 651; *Macy* v. *Indianapolis*, 17 Ind. 267; *Markham* v. *Mayor*, 23 Ga. 402; *Hooker* v. *New Haven and Northampton*

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ject to the restrictions in this Act contained; (*b*) and for preventing and removing any obstruction upon any roads or bridges within its jurisdiction; (*c*) 29-30 V. c. 51, s. 333, sub. 1; 34 V. c. 30, s. 4.

*Tolls.*

Raising money by toll.

(2.) For raising money by toll, on any bridge, road or

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*Co.* 14 Conn. 146; *Hovey* v. *Mayo*, 43 Me. 322; *Creal* v. *Keokuk*, 4 Greene (Iowa), 47; *Benedict* v. *Goit*, 3 Barb. 459; *Wilson* v. *New York*, 1 Denio. 595; *Simmons* v. *Camden*, 26 Ark. 276; s. c. 7 Am. Rep. 620.) If the power be exercised in an unreasonable manner, or wantonly and maliciously, the rule is different. (*Roberts* v. *Chicago*, 26 Ill. 249; *Rudolphe* v. *New Orleans*, 11 La. An. 242; *Rounds* v. *Mumford*, 2 Rh. I. 154; *Louisville* v. *Rolling Mill Co.* 3 Bush. (Ky.) 416; *Dorman* v. *Jacksonville*, 13 Fla. 538; s. c. 7, Am. Rep. 253.) But in Ohio the corporation is held liable, even though the change of grade be lawful and judiciously made. (*Goodloe* v. *Cincinnati*, 4 Ohio, 500; *Rhodes* v. *Cincinnati*, 10 Ohio, 159; *McCombs* v. *Akron*, 15 Ohio, 474; s. c. 18 Ohio, 229.) The corporation is to judge of the necessity for a change of grade, (*Macy* v. *Indianapolis*, 17 Ind. 267,) and of the best grade to adopt. (*Snyder* v. *Rockport*, 6 Ind. 237; *Reynolds* v. *Shreveport*, 13 La. An. 426; *Roberts* v. *Chicago*, 26 Ill. 249.) Where the statute gives a specific remedy for compensation, it alone can be properly pursued. (*Andover and Medford Turnpike Corporation* v. *Gould*, 6 Mass. 40; *Ernst* v. *Kunkle*, 5 Ohio St. 520; *Hovey* v. *Mayo*, 43 Me. 322; *Cole* v. *Muscatine*, 14 Iowa, 296.) A By-law of a County Council, appropriating a certain sum of money "to be expended on certain roads within the county (not defined), in such manner as the township and town councillors may think proper," has been held bad. (*In re Conger and Peterborough*, 8 U. C. Q. B. 349.) So a By-law taxing the wild lands of a district, "for the purpose of improving the roads and bridges (not defined), and liquidating the debts of the district." (*Doe dem. McGill* v. *Langton*, 9 U. C. Q. B. 91.)

(*b*) It is by sec. 373 expressly provided that every council *shall* make the owners or occupiers or other persons interested in real property *entered upon*, *taken* or *used* by the corporation in the exercise of any of its powers, or injuriously affected by the exercise of any of its powers due compensation for damages resulting from the exercise of such powers. So in the case of land entered upon, taken or used, there is a positive restriction, unless upon payment of due compensation. The difficulty arises in cases where the injury is not direct but indirect, and such as mentioned in the previous note. It is clear that no municipal council has a legal right to say they may *trespass* a little upon the property of a private person, doing no unnecessary damage, unless they show that it was necessary and convenient for the purposes of the road, street or other work. (*The Churchwardens of St. George's Church* v. *Grey et al*, 21 U. C. Q. B. 265.) Unless a By-law were shown, the corporation would be looked upon as trespassers; and to answer, under such circumstances, that they trespassed a little, doing no unnecessary damage, would be no answer at all. (*Ib.*)

(*c*) See note *x* to sub. 42 of sec. 384, and note *p* to sec. 409.

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other work, to defray the expense of making or repairing the same; (*d*) 29-30 V. c. 51, s. 333, sub. 2.

(3.) For making regulations as to pits, precipices and deep waters, and other places dangerous to travellers; (*e*) 29-30 V. c. 51, s. 333, sub. 4. Making regulations as to dangerous places.

*Timber, &c., on Road Allowances.*

(4.) For preserving or selling timber, trees, stone, sand or gravel, on any allowance or appropriations for a public road; (*f*) but this shall be subject to the provisions of the Act passed in the thirty-fourth year of Her Majesty's reign, For preservation of trees, stone, &c. Proviso.

(*d*) It is a principle of law that taxes and tolls are not to be imposed by any latitude of construction given to an Act of Parliament. The authority for them must be clear and express. (*Per* Robinson, C. J., in *Wilson* v. *Groves*, 17 U. C. Q. B. 419, 424.) The amount of tolls authorized by this subsection appears subject to limitation left to the discretion of the municipality. (*Municipality* v. *Pease*, 2 La. An. 538; *Muscatine* v. *Hershey*, 18 Iowa, 39.) And the limitation in effect is, that they be no more than sufficient "to defray the expense of making and repairing" the bridge, road or other work. (See *In re Campbell* v. *Kingston*, 14 U. C. C. P. 285.) It has been held that a municipal corporation which acquired a public road or bridge is bound by stat. 16 Vic. cap. 190, sec. 31, and is not entitled to collect tolls for merely crossing any road, or for travelling thereon in crossing from one transverse road to another, when the distance between such transverse roads does not exceed 100 yards. (*Wilson* v. *Groves*, 17 U. C. Q. B. 419.)

(*e*) Dangerous places on a highway subject the corporation in whom the highway is vested to an action for damages for injury arising from such places being allowed to remain in the highway. (See note *p* to sec. 409.) The power to regulate such places is therefore essential to the protection of the corporation, as well as the safety of the travelling public.

(*f*) The right of a municipal corporation to sell timber growing and standing on a road allowance, so as to vest a property in the trees in the vendee was at one time doubted. (*Cochran* v. *Hislop*, 3 U. C. C. P. 440.) But express power to sell includes the power to pass the property, and also gives the right to recover the value of trees wrongfully taken from a road allowance. (*Burleigh* v. *Hales*, 27 U. C. Q. B. 72.) If there were no such provision, the property in trees growing on original road allowances would undoubtedly be in the Crown as the owner of the soil. The leading object of the reservation of road allowances, however, was not to grow timber trees upon them, but that they should be subservient to the use of settlers upon land adjoining or near thereto, as well as of the general public. (*Per* Draper, C. J., *Ib.* 76. See also *Burleigh* v. *Campbell*, 18 U. C. C. P. 457,) In the absence of legislation, the Crown has no right, without the consent of the municipality, to sell standing timber on road allowances. (*Barrie* v. *Gillies*, 20 U. C. C. P. 369; s. c. on appeal, 21 U. C. C. P. 213.)



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chaptered nineteen, relative to Government road allowances and the granting of Crown timber licenses; (*g*) 29-30 V. c. 51, s. 333, sub. 5.

*Permitting Road and Bridge Companies to make, &c.*

Granting privileges to road or bridge companies.

(5.) For regulating the manner of granting to road or bridge companies, permission to commence or proceed with roads or bridges within its jurisdiction, and for regulating the manner of ascertaining and declaring the completion of the work, so as to entitle such companies to levy tolls thereon, and for regulating the manner of making the examinations necessary for the proper exercise of these powers by the Council; (*h*) 29-30 V. c. 51, s. 333, sub. 7.

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(*g*) This Act declares road allowances to be ungranted lands for the purpose of granting licenses to cut timber; gives the right to the government licensee to cut the same; declares that no municipal By-law shall have any effect against such a license, but entitles the municipalities to a portion of the timber dues, to be expended on the improvement of highways within the municipality. (34 Vic. cap. 19.) The Act was passed in consequence of the decision of *Barrie* v. *Gillies*, mentioned in the last note.

(*h*) The powers are, to pass By-laws:

1. For regulating the manner of granting to road or bridge companies permission *to commence* or proceed with roads or bridges within its jurisdiction.

2. For regulating the manner of ascertaining or declaring *the completion* of the work, so as to entitle such companies to levy tolls.

3. For regulating the manner of making *the examination necessary* for the proper exercise of the powers of the Council.

The Legislature has conferred upon Municipal Corporations very extensive powers in relation to public highways. Upon these Corporations, in the first place, is devolved the duty—and perhaps it may be found the option too—of constructing roads and bridges throughout the several localities represented by Municipal Councils. Before others can legally exercise these powers, permission is required from the local Municipal Corporation. The power to grant permission involves the power to withhold it; and if a road company were, without such permission, to attempt to interfere with the highways of the Municipality, the Court of Chancery, upon an application made at the proper time, grounded on proper materials, no doubt would interfere by injunction. (*Attorney-General ex rel. Nepean* v. *The Bytown and Nepean Road Company*, 2 Grant, 626.) The power is not only to grant or withhold permission to commence, but, if granted, to make regulations for the completion of the work, and to make the examinations necessary for the proper exercise of these powers. So that the controlling and directing power is, as it were, vested in the Municipal Corporations. (See sub. 54 to sec. 384, and notes thereto.) No Company formed under the Joint Stock Companies Road Act is allowed to commence any work until thirty days after the directors have

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*Grant of Tolls.*

(6.) For granting to any person, in consideration or part consideration of planking, gravelling or macadamizing a road, or of building a bridge, the tolls fixed by By-law to be levied on the work for a period of not more than twenty-one years after the work has been completed, and after such completion has been declared by a By-law of the Council authorizing tolls to be collected; (*i*) and the grantee of such tolls shall, during the period of his right thereto, maintain the road or bridge in repair; (*k*) 29-30 V. c. 51, s. 333, sub. 9. Granting right to take tolls.

*Taking Materials.*

(7.) For searching for and taking such timber, gravel, stone or other material or materials as may be necessary for making and keeping in repair any road or highway belonging to any such Municipality; and the right of entry upon such lands, as well as the price or damage to be paid to any person for such materials, shall, if not agreed upon by the parties concerned, be settled by arbitration in the manner provided by this Act; (*l*) 29-30 V. c. 51, s. 333, sub. 10. Searching for and taking materials for roads, &c.

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served a written notice upon the head of the Municipality in the jurisdiction of which such road is intended to pass or be constructed. (Con. Stat. U. C. cap. 49, sec. 10.) If the Municipal Council pass a By-law prohibiting, varying or altering any such intended line of road, the By-law shall have the same force and effect, and be obligatory upon all persons and upon the Company, if the Company proceed in the construction of the road, as much as if the provisions thereof were part of the said Act. (*Ib.*) But if no By-law be passed within thirty days after service of the notice, then the Company may proceed with the intended road, without being liable to any interruption or opposition from any source whatever. (*Ib.* sec. 11.) No such road, however, shall, under any circumstances, be constructed or pass within the limits of any City, Incorporated Town or Village, except by permission, under a By-law, of the City, Town or Village, passed for the purpose. (*Ib.* sec. 6.)

(*i*) A grant for a term of years is authorized for a consideration stated. The grant is to be of the rates fixed by By-law to be levied, &c. The term is not to be more than 21 years, and the consideration, or part consideration, is to be that of planking, gravelling or macadamizing the road, &c., or of building a bridge, &c. The right of the lessee to give in his own name for tolls is doubtful. (*Whiteside* v. *Bellchamber*, 22 U. C. C. P. 241; *Hinckley* v. *Gildersleeve*, 19 Grant, 212.) As to the rate of tolls, see note *d* to sub. 2 of sec. 425.

(*k*) See note *m* to sec. 413.

(*l*) This is an exercise of eminent domain, and so is made expressly subject to the payment of compensation. (See sec. 373, and notes thereto.) The right is to pass By-laws for searching for and taking such timber, gravel, stone or other material or materials as may be

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*Selling Old Road Allowances.*

When the Council may stop up or sell a road allowance.

(8.) For selling the original road allowance to the parties next adjoining whose lands the same is situated, when a public road has been opened in lieu of the original road allowance, and for the site or line of which compensation has been paid, and for selling in like manner to the owners of any adjoining land, any road legally stopped up or altered by the Council; and in case such parties respectively refuse to become the purchasers at such price as the Council thinks reasonable, then for the sale thereof to any other person for the same or a greater price. (*m*) 29-30 V. c. 51, s. 333, sub. 6.

When a road is substituted for an original allowance, compensation to person whose land is taken who owns land original adjoining road.

**426.** In case any one in possession of a concession road or side line has laid out and opened a road or street in place thereof without receiving compensation therefor, or in case

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*necessary* for making and keeping in repair any road or highway belonging to the Municipality. But the right of entry, as well as price or damage to be paid to any person for such materials, is either to be agreed upon or settled by arbitration. (See sec. 279 *et seq.*)

(*m*) Where a public road has been opened through private property, in lieu of an original allowance for road, for which compensation has been paid, the original allowance may be sold "to the *parties* next adjoining whose lands the same is situated." The allowance may adjoin on each side the lands of different parties, and it then becomes a question whether the Council is bound to sell to each one half of the allowance, or may sell the whole to one. Similar authority is conferred as to "any road legally stopped up and altered by the Council." If the parties entitled to preëmption refuse to purchase, then, and only then, is the Council authorized to sell to any *other* person. The statute does not require the Corporation to do more than close or stop up the road allowance. They are not required to fence it in or place any physical obstruction in the way of persons using it. They only put an end to the right of using it, and consequently to all obligation on the part of any person to respect it as a highway. The selling of the road allowance is one thing; the stopping up of a road allowance is an entirely different thing. The sale is by no means necessary to the extinction of the public easement. (*Johnston* v. *Reesor et al*, 10 U. C. Q. B. 101.) The stopping up an original allowance for road is a distinct thing from selling and conveying it, and requires to be distinctly and directly provided for. Until a By-law has been passed to stop up the allowances they still continue public highways, and cannot be sold or conveyed. (*Per* Robinson, C. J., in *In re Choate and Hope*, 16 U. C. Q. B. 428.) Where it is contended by a private individual that a road allowance has been legally stopped up and conveyed to him, he must show that all the proceedings made necessary in that behalf have been taken by the Corporation. (*Winter* v. *Keown et al*, 22 U. C. Q. B. 341.)

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a new or travelled public road has been laid out and opened in lieu of an original allowance for road, and for which no compensation has been paid to the owner of the land appropriated as a public road in place of such original allowance, the owner, if his lands adjoin the concession road, side line, or original allowance, shall be entitled thereto, in lieu of the road so laid out, (*n*) and the Council of the Municipality, upon the report, in writing, of its surveyor or of a deputy provincial land surveyor, that such new or travelled road is sufficient for the purposes of a public highway, (*o*) may convey the said original allowance for road in fee simple to the person or persons upon whose land the new road runs, (*p*)

Conveying of former road allowance.

(*n*) So far, this section provides for two cases: first, where a person in *possession* of a concession road or side line has *himself* laid out and opened a road, &c., in place thereof; secondly, where a new or travelled road has been laid out and opened by, it is conceived, *the proper authority*, in lieu of an original allowance for road, &c. In either of these cases, if no compensation has been paid to the owner of the land, and if his lands adjoin the concession road, side line, or original allowance, he shall be *entitled* to the original road allowance in lieu of the road laid out. It is not clear whether or not a person who is a mere locatee from the Crown of the land through which the new road runs, can afterwards, by obtaining the patent, become an owner within the meaning of this section, so as to be entitled to a conveyance of the old road allowance. Chief Justice McLean thought not; Hagarty, J., in same case, guarded himself from expressing any opinion on the point. (*Winter* v. *McKeown*, 22 U. C. Q. B. 341.)

(*o*) It is a clear principle of law that every intendment is to be made in favour of the public, and against the individual who seeks to deprive the public of the right which it is confessed the public once had, and that it is incumbent upon the individual who asserts a private right acquired over a public one which was once vested, that he shall do so upon clear, irrefragable evidence, and that nothing shall be left to depend upon conjectural inference and assumption. (*Per* Burns, J., in *Purdy* v. *Farley et al*, 10 U. C. Q. B. 545, 568; see also *The Queen* v. *Great Western Railway Company*, 32 U. C. Q. B. 506.) The surveyor's report should be express that the new and travelled road is sufficient for the purposes of a public highway; and in the report he should state the width of the new road and the line to be run. (*The King* v. *Sanderson*, 3 O. S. 103; *Purdy* v. *Farley*, 10 U. C. Q. B. 545; see further, *The Queen* v. *Phillips*, L. R. 1 Q. B. 648.)

(*p*) While it is declared that certain persons shall be *entitled* to the old road allowance, it is declared that the Council *may* (not shall) convey, &c. The question arises whether or not the Municipal Council can refuse a conveyance to the persons entitled. The section certainly contemplates that the Municipal Council may convey, and it is apprehended that the conveyance, if made at all, must be to the persons entitled and when entitled. If the Municipal Council is to exercise its discretion as to conveying, and refuse to do so when it ought, the positive effect of the enactment, which declares

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and when any such original road allowance is, in the opinion of the Council, useless to the public, and lies between lands owned by different parties, the Municipal Council may, subject to the conditions aforesaid, sell and convey a part thereof to each of such parties as may seem just and reasonable;·(*q*) and in case compensation was not paid for the new road, and the person through whose land the same passes does not own the land adjoining the original road allowance, the amount received from the purchaser of the corresponding part of the road allowance, when sold, shall be paid to the person who at the time of the sale owns the land through which the new road passes. (*r*) 29-30 V. c. 51, s. 334.

Compensation to party whose land is taken who does not own land adjoining original road.

*Possession of Unopened Road Allowances.*

**427.** In case a person be in possession of any part of a Government allowance for road laid out adjoining his lot and enclosed by a lawful fence, and which has not been opened for public use by reason of another road being used in lieu thereof, or be in possession of any Government allowance for road parallel or near to which a road has been established by law in lieu thereof, such person shall be deemed legally possessed thereof, as against any private person, (*s*) until a By-law has been passed for opening such

Original allowances for roads when to be deemed legally possessed till a by-law is passed for opening them.

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that certain persons "shall be entitled thereto," would be destroyed, unless the Courts have power to compel the Municipality to convey, or unless the enactment itself gives them a title thereto. (*In re Burritt* v. *Marlborough*, 29 U.C. Q. B. 119.)

(*q*) See note *m* to sub. 8 of sec. 425.

(*r*) If the person from whom the land for the new road is taken has not land adjoining the old road allowance, the allowance would be of little or no use to him. For this reason it is provided that in such case the allowance shall be sold, and the proceeds paid to the person whose land is taken for the new road.

(*s*) This section provides for the security of, first, a person in possession of any part of a Government allowance for road, &c., not opened for use "by reason of *another* road *being used* in lieu thereof;" and secondly, a person in possession of any Government allowance for road parallel or near to which "a road *has been established by law*, in lieu thereof," &c. A person so circumstanced is to be deemed legally possessed as against any "*private person*," but not as against the Crown; and he is to be deemed so possessed "until a By-law has been passed for opening such allowance," &c. So that as well against private persons as Municipal Councils, until a By-law is passed for opening, &c., he is to be deemed legally possessed. By an Act of 1810, all allowances for roads laid out by public authority were declared, whether opened or not, used or not, "public highways" (50 Geo. III. cap. 1, sec. 12); but for the security of persons in possession of them when not used, it was in 1846 enacted that no

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allowance for road by the Council having jurisdiction over the same. (*t*) 29-30 V. c. 51, s. 335.

*Notice of By-law for Opening such Allowances.*

Notice of by-law to be given.

**428.** No such By-law shall be passed until notice in writing has been given to the person in possession, at least eight days before the meeting of the Council, that an application will be made for opening such allowance. (*u*) 29-30 V. c. 51, s. 336.

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allowance for road in possession of a private person should be opened unless upon notice to him, and the passing of an order of the proper Municipal authority. (9 Vic. cap. 8.) Both these enactments are here in substance reënacted. A person in possession of a road allowance where a new road has been opened or is used in lieu of it, to save himself from all disturbance, ought to acquire a legal title thereto, pursuant to sec. 426 of this Act. (See *Purdy* v. *Farley*, 10 U. C. Q. B. 545.)

(*t*) A Municipal Corporation has a clear right to open an original allowance for road, and in doing so they must, at their peril, be correct as to its true position. The By-law should really describe the boundaries of the allowance, if there be any uncertainty as to the true boundary. (*McMullen and Caradoc*, 22 U. C. C. P. 356.) "If the limits assigned be not the true limits of the side road as originally surveyed, the Council has no jurisdiction to enact and declare that they shall be; and whether the declaratory enactment have any validity or not, a person *bona fide* contesting the true site of the road has, I think, reason to complain of such a clause being inserted in the By-law, as calculated to expose him to difficulties at any rate, if not to prejudice him in the conduct of any litigation which he may institute for the purpose of bringing the point in difference up for judicial inquiry. But in enacting that the original allowance shall be opened, although describing that road by metes and bounds, I do not see that the applicant can be prejudiced; for in any litigation arising upon the point, it would, I apprehend, in such a case be necessary to establish that the metes and bounds assumed to be, are, in fact, the true limits of the original allowance. The first clause of the By-law will have therefore to be quashed," &c. (*Per* Gwynne, J., *Ib.* 360, 361.) A By-law enacting that "every person or persons having enclosed or occupying any part or parts of said quarter town line (an original allowance for road) shall be required, on or before the first day of November next, to give up possession and open the same for the use of the public travel; the same to be made by gratuitous or statute labour," &c., was held to be valid. (*In re McMichael and Townsend*, 33 U. C. Q. B. 158.) And *per* Morrison, J., "The By-law is in effect a notification to such parties (parties in possession) that after the day named the road allowance will be opened for the use of the public, when the Council will take the steps for that purpose. It is inartificially expressed, but can do no harm; and we see no ground for quashing the By-law." (*Ib.* 164.)

(*u*) There must be a notice in writing, which must be given to the person in possession *at least* eight days before the meeting of the

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*Aiding in making Roads and Bridges.*

By-laws to aid adjoining municipality to open roads, &c.

**429.** The Council of any Municipality may pass By-laws for granting aid to any adjoining Municipality in making, opening, maintaining, widening, raising, lowering or otherwise improving any highway, road, street, bridge or communication passing from or through an adjoining Municipality. (*v*) 32 V. c. 43, s. 20.

By-laws may be made for—

**430.** The Municipal Council of every Township, City, Town and Incorporated Village may pass By-laws: (*w*)

Aiding counties in making roads and bridges.

(1.) For granting to the County or United Counties in which such Municipality lies, aid, by loan or otherwise, towards opening or making any new road or bridge on the bounds of such Municipality; (*x*)

Joint works with other municipalities.

(2.) For entering into and performing any arrangement with any other Council in the same County or United Counties, for executing, at their joint expense and for their joint benefit, any work within the jurisdiction of the Council. (*y*) 29-30 V. c. 51, s. 337.

*Repair of Township Roads—how Enforced.*

If any township council fails to perform its duty.

**431.** Whenever Township Councils fail to maintain Township boundary lines not assumed by the County Coun-

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Council. (See *In re Sams and Toronto*, 9 U. C. Q. B. 181.) The object is to prevent his being taken by surprise in regard to the intention to open the road allowance of which he is in possession.

(*v*) In general, the jurisdiction of a Municipal Council is restricted within the boundaries of the Municipality. (See note *j* to sec. 16; see also note *e* to sec. 222.) But as roads, streets, bridges and other like public communications may extend from one adjoining Municipality into another, so as to be partly in each, power is here given to pass By-laws for granting aid to an adjoining Municipality in making, opening, maintaining, widening, raising, lowering or otherwise improving any such road, &c. (See note *a* to sub. 1 to sec. 425.)

(*w*) *May*, &c. (See note *b* to sec. 412.)

(*x*) As a rule, Councils of Municipalities less than Counties have not power spontaneously to assess themselves for County purposes. (See note *e* to sec. 222.) The power given by this clause is to grant aid, by loan or otherwise, towards opening or making any new road, *i.e.* not stating whether the same may be done voluntarily or only upon the solicitation of the Council of the County. (See note *v* to sec. 429.)

(*y*) A bridge between two Municipalities—Townships, for example—divided by a stream, is a good example of a work that may be executed at "joint expense" and for "joint benefit." (See *Harrold* v. *Simcoe and Ontario*, 16 U. C. C. P. 43, s. c. 18 U. C. C. P. 9; see further, sec. 413 and notes thereto.)

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cil, in the same way as other Township roads, by mutual agreement as to the share to be borne by each, it shall be competent for one or more of such Councils to apply to the County Council to enforce joint action on all Township Councils interested. (*a*) 29-30 V. c. 51, s. 341, sub. 2.

If all the councils fail.

**432.** In cases where all the Township Councils interested neglect or refuse to open up and repair such lines of road in a manner similar to the other local roads, it shall be competent for a majority of the ratepayers resident on the lots bordering on either or both sides of such line to petition the County Council to enforce the opening up or repair of such lines of road by the Township Councils interested. (*b*) 29-30 V. c. 51, s. 341, sub. 3.

Duty of county councils on petition.

**433.** A County Council receiving such petition, either from Township Councils or from ratepayers, as in the preceding section mentioned, may (*c*) consider and act upon the same at the session at which the petition is presented. (*d*) 29-30 V. c. 51, s. 341, sub. 4; 33 V. c. 26, s. 16.

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(*a*) The roads here intended are "Township boundary lines." Apparently the intention is to embrace roads dividing Townships; otherwise there would be no necessity for a provision as "to the share to be borne by each" in respect of the obligation to open, repair and improve. It is true that in the case of Townships adjacent to an unsurveyed track, the provision would be in terms applicable, whether Townships were divided or not by "the boundary line." But the probability is, that the Legislature meant the section to have a more extended operation. This supposition is confirmed by a reference to sec. 432, which gives certain powers to the ratepayers bordering "on either or *both* sides of such line." The County Council is, in relation to such Townships, as it were, made the arbiter. Power is given to the County Council, on the application of any Township interested, "to enforce joint action" on all interested. The application should be by petition.

(*b*) The preceding section supposes at least one of the Townships interested disposed to do what is required of it. But if all interested fail to perform the duty cast upon them, a majority of the ratepayers resident on the lots bordering on either or both sides of such line may petition the Council to enforce the opening up or repair of such line by the Township Councils interested. The time and mode of so doing are provided for by the next section.

(*c*) "May" is permissive. (See note *b* to sec. 412.) The original section, 29 and 30 Vic. cap. 51, sec. 341, sub. 4, provided that "*it shall be the duty*" of a County Council receiving, &c. The change in language is designed to remove the duty, and leave the power to act as one of simple discretion. (See 33 Vic. cap. 26, sec. 16.)

(*d*) The action may be either by directing the expenditure of money, or the doing of statute labour, or both, as may seem necessary "to make the said lines of road equal to other local roads." (See sec. 434.)

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Amount &c., to be furnished by each township.

**434.** The County Council may (*e*) determine upon the amount which each Township Council interested shall be required to apply for the opening or repairing of such lines of road, or to direct the expenditure of a certain proportion of statute labour, or both, as may seem necessary to make the said lines of road equal to other local roads. (*f*) 29-30 V. c. 51, s. 341, sub. 4; 33 V. c. 26, s. 16.

Commissioners to enforce order of county council as to such roads.

**435.** It shall be the duty of the County Council to appoint a Commissioner or Commissioners to execute and enforce their orders or By-laws relative to such roads; Provided always, that if the representatives of any or all of the Townships interested shall intimate to the Council or to the Commissioner or Commissioners so appointed, their intention to execute the work themselves, then such Commissioner or Commissioners shall delay proceedings for a reasonable time; (*g*) but if the work be not proceeded with during the favourable season by the Township officers, then the Commissioners shall undertake and finish it themselves. 29-30 V. c. 51, s. 341, sub. 5.

Proviso.

Sums determined upon to be paid by townships.

**436.** Any sum of money so determined upon by the County Council as the portion to be paid by the respective Townships, shall be paid by the County Treasurer on the order of the Commissioner or Commissioners, and the amount retained out of any money in his hands belonging to

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(*e*) See note *c* to sec. 433.

(*f*) The powers of the County Council are, to—

1. Determine the amount which each Township Council interested shall be required to apply, &c.
2. Direct the expenditure of a certain proportion of statute labour.
3. Or *both*.

Any different form of determination would be unauthorized and void.

(*g*) The mere order or direction of the County Council, without powers to enforce it against the Townships interested, would be of little avail. Power is therefore given to County Councils to appoint a Commissioner or Commissioners "to execute and enforce their orders or By-laws relative to such roads." This is, as it were, *in terrorem;* for it is also provided that if the representatives (probably meaning Reeves or Deputy Reeves) of any or all of the Townships interested shall intimate to the Council or to the Commissioner or Commissioners their intention to execute the work themselves, then the Commissioner or Commissioners may delay their proceeding. But the delay is only to be for "a reasonable time." If the work be not proceeded with during "the favourable season" by the Township officers, then the Commissioners shall undertake it, and finish it themselves.

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such Township; but if there be not at any time before the striking of a county rate any such moneys belonging to such Township in the Treasurer's hands, an additional rate shall be levied by the County Council against such Township, sufficient to cover such advances. (*h*) 29-30 V. c. 51, s. 341, sub. 6.

When the several townships interested cannot agree.

**437.** Whenever the several Townships interested in the whole or part of any County boundary line road are unable mutually to agree as to their joint action in opening or maintaining such line road, or portion thereof, one or more of such Township Councils may apply to the Wardens of the bordering Counties to determine jointly the amount which each Township shall be required to expend either in money or statute labour, or both, and the mode of expenditure on such road; (*i*) the County Judge of the County in which the Township first making the application is situate shall, in all cases, be the third arbitrator when such Wardens are unable to agree. (*j*) 29-30 V. c. 51, s. 341, sub. 8.

Wardens to be arbitrators.

County judge also.

Meeting of wardens.

**438.** It shall be the duty of the Wardens of the Counties interested to meet within twenty-one days from the time of receiving such application for the determination of the matter in dispute; the Warden of the County in which the Township first making the application is situated shall be the convener of the meeting; and it shall be his duty to notify the Warden of the other County and County Judge of the time and place of meeting, within eight days of the time

Who to convene.

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(*h*) Where Commissioners do the work, some provision is necessary for payment. It is therefore provided that the money shall be paid by the County Treasurer, "on the order of the Commissioner or Commissioners." When so paid, the money is to be retained by the County Treasurer out of any money in his hands belonging to the township. If none, then the County Council may levy against such township a rate "sufficient to cover such advances."

(*i*) The County Council is, as it were, made the arbitrator between Townships in the same County. (See note *a* to sec. 431.) But where the Townships are of different Counties, the Wardens of the Counties are by this subsection made the arbiters. Their power as such arbiters is "to determine jointly the amount which each Township shall be required to expend, either in money or statute labour, or both, *and* the mode of expenditure." (See note *f* to sec. 434.)

(*j*) It is apparently made the duty of the County Judge to act. (See note *l* to sec. 439.) But if his duties proper were to demand the whole of his time, no one could blame him for refusing to discharge such an extra-judicial duty as that sought to be imposed upon him by this section.

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of his receiving such application. (*k*) 29-30 V. c. 51, s. 341, sub. 9.

What the wardens and county judge shall determine, &c.

**439.** At such meeting, the Wardens and County Judge, or any two of them, (*l*) shall determine (*m*) on the share to be borne by the respective Townships, of the amount required on the part or parts to be opened or repaired by each or both, and shall appoint a Commissioner or Commissioners to superintend such work; and it shall be the duty of the Township Treasurer to pay the orders of such Commissioners to the extent of the sum apportioned to each; and path-masters controlling the statute labour on the lots adjoining such line, on the portion of such line to be opened or repaired, shall obey the orders of such Commissioner or Commissioners in performing the statute labour unexpended. 29-30 V. c. 51, s. 341, sub. 10.

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(*k*) In order that time may not be unnecessarily lost, it is made the duty of the Wardens to meet "within twenty-one days" from the time of receiving the application. (See note *a* to sec. 128.) The initiative rests upon the Warden of the County in which the Township that first made the application is situate. He is the convener of the meeting. It is made his duty to notify the Warden of the other County *and* the County Judge of the time and place of meeting. This he must do "within eight days" of the time of his receiving the application.

(*l*) By sec. 437 it is provided that the County Judge is to be the third arbitrator, "when such Wardens are unable to agree." And yet it is provided by section 438 that the convening Warden shall (before any opportunity to agree or disagree) notify "the other Warden and the County Judge" of the time and place of meeting; and here it is provided that "the Wardens *and* County Judge, or any two of them," shall determine, &c.; as if the County Judge were to be third arbitrator, whether the Wardens disagreed or not. In these respects there is an apparent inconsistency between the sub-sections mentioned.

(*m*) The duties of the arbitrators are:

1. To *determine* on the share to be borne by the respective Townships of the amount required on the part or parts to be opened or repaired by each or both. (See notes to sec. 61 of the Assessment Act.)

2. To *appoint* a Commissioner or Commissioners to superintend such work.

It is the duty of the Township Treasurer to pay the orders of the Commissioners to the extent of the sum apportioned to each Township.

Besides, path-masters, controlling statute labour on lots adjoining the line, on the portion of the line to be opened or repaired, must obey the order of the Commissioner or Commissioners in performing the statute labour unexpended.

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*Powers of County Councils.*

**440.** The Council of every County shall have power to pass By-laws (*n*) for the following purposes: By-laws for—

*Closing Road Allowances.*

(1.) For stopping up, or stopping up and sale, of any original allowance for roads or parts thereof within the County, (*o*) which is subject to the sole jurisdiction and control of the Council, and not being within the limits of any Village, Town or City within or adjoining the County; (*p*) but the By-law for this purpose shall be subject to the four hundred and twenty-fourth section of this Act; (*q*) 29-30 V. c. 51, s. 344, sub. 1. Disposing of original allowance for roads in certain cases.

*Opening and Altering Roads.*

(2.) For opening, making, preserving, improving, repairing, widening, altering, diverting and stopping up roads, streets, squares, alleys, lanes, bridges or other public communications, running or being within one or more Townships, or between two or more Townships of the County, or any bridge required to be built or made across any river over two hundred feet in width within any Incorporated Village in the County connecting any public highway leading through the County, and which is in continuation of a County road, or between the County and any adjoining County or City or separated Town, or on the bounds of any Town or Incorporated Village within the boundaries of the County, as the interests of the inhabitants of the County, in the opinion of the Council, require to be so opened, made, preserved and improved, (*r*) and for entering upon, Opening, &c. roads, &c. within or between several municipalities.

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(*n*) See note *b* to sec. 412.

(*o*) The stopping up of a highway is one thing, and the sale of it another. The sale is in no way essential to the effective stopping up of the highway. The power is to pass By-laws for stopping up, *or* stopping up *and* sale, &c. (See note *m* to sec. 426.)

(*p*) The powers conferred, so far as Counties are concerned, are limited to an original allowance for roads or parts thereof within the County, and only to such as are subject to the sole jurisdiction and control of the County Council, and not being within the limits of any Village, Town or City within or adjoining the County.

As to what are County roads, see secs. 410, 411, 412.

(*q*) *i. e.* as to notice. See sec. 424 and notes thereto.

(*r*) The powers of the County Council under this section are, to pass By-laws for—

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breaking up, taking or using any land in any way necessary or convenient for the said purposes, subject to the restrictions herein contained; (*s*) 29-30 V. c. 51, s. 344, sub. 3; 34 V. c. 30, s. 9.

*Trees Obstructing Highways.*

May direct the trees to be cleared on each side of highways.

(3.) For directing that, on each and either side of a highway (under the jurisdiction of the Council) (*t*) passing through a wood, the trees (unless such as are reserved by the owner for ornament or shelter) shall, for a space not exceeding twenty-five feet on each side of the highway, be cut down and removed by the proprietor within a time appointed by the By-law, (*u*) or, in his default, by the County Surveyor or other officer in whose division the land

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1. Opening;
2. Making;
3. Preserving;
4. Improving;
5. Repairing;
6. Widening;
7. Altering;
8. Diverting;
9. Stopping up;

Roads, streets, squares, alleys, lanes, bridges or other communications—

1. *Within* one or more Townships.
2. *Between* two or more Townships.
3. *Between* the County and adjoining County or City.
4. *On the bounds* of any Town or Incorporated Village.

5. Any bridge over 200 feet in width within any Incorporated Village in the County, connecting any public highway leading through the County, and which is a continuation of a County road.

See generally as to these powers, note *a* to sub. 1 of sec. 425.

(*s*) See note *b* to same section.

(*t*) Powers precisely similar to those by this clause conferred on Counties are also by this Act conferred on *Townships*. (Sec. 441, sub. 3.) This subsection is to be read only as to roads over which County Councils have exclusive jurisdiction. So sec. 441, sub. 3, is to be read only as to roads vested in the Townships. By this construction conflict of jurisdiction is prevented.

(*u*) This authorizes a serious interference with private rights, and yet makes no provision for compensation. Not only the trees shall for a space not exceeding twenty-five feet on each side of a highway be cut down, but the duty of doing so imposed on the proprietor himself. The general rule is that when the property of a private person is interfered with for a public benefit, compensation shall be made. (See sec. 373 and notes; see also note *b* to sub. 1 of sec. 425.) It has been held that the statutable duty of opening a road on which trees grew was no answer to an action for injury caused to the plaintiff's land by the felling of trees, accompanied by the allegation that in so opening the road a portion of the trees on being cut and felled necessarily reached to and fell upon the plaintiff's land, but doing the said land no unnecessary and no material damage. (*Rowe* v. *Rochester*, 22 U. C. C. P. 319.)

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lies; and, in the latter case, for authorizing the trees to be used by the overseer or other officer for any purpose connected with the improvement of the highways and bridges in his division, or to be sold by him to defray the expenses of carrying the By-law into effect; (*v*) and may further pay such expenses out of County funds; 29-30 V. c. 51, s. 344, sub. 5.

*Aiding Townships, &c.*

For aiding the making of roads and bridges.

(4.) For granting to any Town, Township or Incorporated Village in the County, aid, by loan or otherwise, towards opening or making any new road or bridge in the Town, Township or Village, in cases where the Council deems the County at large sufficiently interested in the work to justify such assistance, but not sufficiently interested to justify the Council in at once assuming the same as a county work, (*w*) and also for guaranteeing the debentures of any Municipality within the County, as the Council may deem expedient; (*x*) 29-30 V. c. 51, s. 344, sub. 6.

Guaranteeing debentures of local municipalities opening roads in local municipalities.

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(*v*) If the proprietor himself cut the trees they become his property. They are his property as owner of the land. (See note *f* to sec. 425.) But if he make default, the By-law may authorize the trees either to be used for Municipal purposes or sold to defray the expenses of carrying the By-law into effect. (See latter part of note *m* to sub. 10 of sec. 379.) Further expense, if any, to be paid out of County funds.

(*w*) The ordinary powers of a County Council are, so far as roads and bridges are concerned, to deal only with County roads and bridges. (See note *e* to sec. 16, and note *l* to sec. 222.)

These are—

1. Such roads and bridges as lie within any Township of the County, which the County Council by By-law assumes as a County road or bridge.

2. Bridges crossing rivers over 200 feet in width, within the limits of any Incorporated Village in the County, and connecting any highway which is in the continuation of a County road leading through the County.

3. Roads and bridges dividing different Townships. (Sec. 410.)

But inasmuch as there may be new roads or bridges contemplated by local Municipalities, in which the County at large may be sufficiently interested to justify assistance, but not sufficiently interested to justify their assumption, power is given to the County Council to grant to the local Municipality aid, by loan or otherwise, towards the opening of the same.

(*x*) The power to guarantee the debentures of any Municipality within the County does not appear to be restricted to the purpose of aiding local works in which the County is interested, but is left apparently to the exercise of the discretion of the County Council in cases in which they think it expedient to do so.

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(5.) For requiring that the whole or any part of any County road within any local Municipality shall be opened, improved and maintained by such local Municipality. (*y*)

*Powers of Township Councils.*

By-laws for—

**441.** The Council of every Township may pass By-laws: (*a*)

*Aiding Counties.*

Aiding adjoining county in making roads, &c.

(1.) For granting to any adjoining County aid in making, opening, maintaining, widening, raising, lowering or otherwise improving any highway, road, street, bridge or communication lying between the Township and any other Municipality, (*b*) and for granting like aid to the County in which the Township lies, in respect of any highway, road, street, bridge or communication within the Township assumed by the County as a County work, or agreed to be so assumed on condition of such grant. (*c*) 29-30 V. c. 51, s. 345, sub. 1.

and granting aid to county for roads assumed by county.

*Closing Road Allowances.*

Stopping up and sale of original road allowance.

(2.) For the stopping up and sale of any original allowance for road or any part thereof within the Municipality, and for fixing and declaring therein the terms upon which

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(*y*) This is a new provision, rendered necessary in all probability by the decision in *In re Rose and Stormont*, 22 U. C. Q. B. 531. See note *b* to sec. 412. But the necessity for such a provision cannot be said to have arisen from any language used by the Judges in that case. On the contrary, the language used is simply opposed to the policy of such a provision.

(*a*) "*May* pass By-laws," &c. (See note *b* to sec. 412.)

(*b*) The powers of a Township Council under this section are for passing By-laws to aid any adjoining Township in—

1. Making;
2. Opening;
3. Maintaining;
4. Widening;
5. Raising;
6. Lowering;
7. Or otherwise improving;

} Any highway, road, street, bridge or communication lying *between* the Township and other Municipality.

See generally as to these powers, note *p* to sec. 424.

The description of aid "by loan or otherwise" is not specified here as in sub. 4 to sec. 440.

(*c*) The power is not to aid the County in respect of *any* local highway, &c., assumed by the County as a County work, but only when in the case of a highway it assumed "on condition of such grant;" in other words, when the promise to make the grant was one of the inducements to the County to assume, and, as it were, the condition on which it was assumed.

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the same is to be sold and conveyed; (*d*) but no such By-law shall have any force (1) unless passed in accordance with the four hundred and twenty-fourth section of this Act, nor (2) (*e*) until confirmed by a By-law of the Council of the County in which the Township is situate, at an ordinary session of the County Council, held not sooner than three months nor later than one year next after the passing thereof; (*f*) 29-30 V. c. 51, s. 345, sub. 2.

*Trees Obstructing Highways.*

Ordering trees to be cut down on each side of a road.

(3.) For directing that, on each or either side of a highway (under the jurisdiction of the Council) (*g*) passing through a wood, the trees (unless such as are reserved by the owner for ornament or shelter) shall, for a space not exceeding twenty-five feet on each side of the highway, be cut down and removed by the proprietor within a time appointed by the By-law, (*h*) or, on his default, by the overseer of highways, or other officer in whose division the land lies; and, in the latter case, for authorizing the trees to be used by the overseer or other officer for any purpose connected with the improvement of the highways and bridges in his division, or to be sold by him to defray the expenses of carrying the By-law into effect; (*i*) and may

(*d*) The "stopping up" is one thing and "the sale" another. There can be no sale till the allowance for road be stopped up. But there may be an effectual stopping up of the allowance although there be no sale. (See note *a* to sec. 425.)

(*e*) As to notice, &c., see sec. 424 and notes.

(*f*) The By-law of the Township is not to have any force until confirmed in the manner and at the time mentioned. If not confirmed at all, or if confirmed at a session of the Council other than the one specified, it would be, for all purposes, inoperative. If not legally confirmed, it would not affect any person's interest. If confirmed by a By-law of the County Council, and illegal, it may be moved against. It would, it seems, be premature to move against the By-law of the Township before confirmation by the County Council. (*In re Choate and Hope*, 16 U. C. Q. B. 424, 428.) The statute 20 Vic. cap. 69, required such a By-law to be confirmed by the County Council within a year from the passing of the By-law. Before confirmation, the 20 Vic. cap. 69 was repealed by statute 22 Vic. cap. 99, saving all things done thereunder, and by it no confirmation of such a By-law was made requisite. The Court intimated that the confirmation of the By-law was still necessary to its validity. (*Winter* v. *Keown*, 22 U. C. Q. B. 341.)

(*g*) See note *t* to sub. 3 of sec. 440.

(*h*) See note *u* to sub. 3 of sec. 440.

(*i*) See note *v* to sub. 3 of sec. 440.



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grant out of Township funds any money that may be necessary to pay for the cutting down and removing such trees; 29-30 V. c. 51, s. 345, sub. 3 & 4.

*Foot Paths.*

Foot paths.

(4.) For setting apart so much of any highway as they may deem necessary for the purposes of a foot path, (*k*) and for imposing penalties on persons travelling thereon on horseback or in vehicles. 33 V. c. 26, s. 11.

*Selling Minerals.*

Sale of mineral rights under roads.

**442.** The Corporation of any Township or County, wherever minerals are found, may sell, by public auction or otherwise, the right to take minerals found upon or under any roads over which said Township or County may have jurisdiction, if considered expedient so to do; (*m*) pro-

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(*k*) Foot paths or side walks constitute a portion of a highway proper for the use of pedestrians, and necessary to be kept in repair by the Municipal Corporation. (See note *p* to sec. 409.) Nothing would be more likely to render such walks unfit and unsafe for the purposes of their design than to allow persons to travel thereon on horseback or in vehicles. Hence the express power to prevent the latter mode of travel by imposition of penalties. It is apprehended that Corporations of Townships, like other local Municipal Corporations, would have an implied power to do all that is here authorized.

(*m*) The freehold of a road, notwithstanding the dedication of the right of way to the public, remains in the owner of the soil. If the road were laid out by the Crown, the soil and freehold would remain still the property of the Crown. (See note *g* to sec. 405.) So, if laid out by a private individual, the soil and freehold would still be the property of that individual. (See note *k* to sec. 407.) The Queen, by her prerogative, hath, in the absence of legislative provision to the contrary, all mines of gold and silver, to make money. (1 Plowd. 336.) But by statute 1 W. & M. cap. 30, no mine of copper or tin shall be adjudged a royal mine, though silver be extracted. So by statute 5 W. & M. cap. 6, persons having mines of copper, tin, lead, &c., shall enjoy the same, although claimed to be royal mines. Alum mines belong to the persons on whose land they are (3 Ins. 185; see also 21 Jac. I. cap. 3, secs. 11, 12; see further, stat. 31 Vic. cap. 19, Ont.) It has been usual in this country for the Crown, when granting lands, to reserve gold and silver mines. Where no such reservation is made, and the mine discovered is not one that can be called a royal mine, the right to the minerals would pass to the owner of the soil. This section, if construed to apply to roads laid out by private individuals, would be an invasion of private rights, without any express provision for compensation. (See sec. 373, and notes thereto.) Minerals, so far as the Municipalities are concerned, are by this section placed on the same footing as growing timber. As to either, the Municipal Corporation may now pass By-laws for sale. There is good reason why,

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vided always, that no such sale shall take place until after due notice of such intended By-law has been posted up in six of the most public places in the immediate neighborhood of such road for at least one month previous to the time fixed for considering such By-law; (*n*) Provided also, that the deed of conveyance to the purchaser or purchasers, under said By-law, shall contain a proviso protecting the road for public travel, and preventing any uses of the granted rights interfering with public travel. (*o*) 31 V. c. 30, s. 37.

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*Sale of Roads in Villages or Hamlets.*

When roads in police villages and certain hamlets may be stopped up, sold, &c. by township councils.

**443.** In case the trustees of any Police Village, or fifteen of the inhabitant householders of any other Unincorporated Village or Hamlet consisting of not less than twenty dwelling houses standing within an area of two hundred acres, petition the Council of the Township in which the Village or Hamlet is situate, and in case the petition of such Unincorporated Village or Hamlet, not being a Police Village, is accompanied by a certificate from the Registrar of the County within which the Township lies, that a plan of the Village or Hamlet has been duly deposited in his office according to the registry laws, (*p*) the Council may

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in the case of standing timber, the removal of which is necessary to the enjoyment of the public easement, such a power should exist. (See note *f* to sub. 4 of sec. 425.) But that reason has no application whatever to the sale of minerals found *under* roads.

(*n*) See sub. 1 of sec. 424, and notes thereto.

(*o*) The right of the public to the use of the highway as a highway is paramount to any right to remove minerals. The latter right therefore must be so exercised as not to interfere with the former. The Municipal Corporation is liable to be sued by any person sustaining damages by reason of defect in the highway, and may, in some cases, without any contract, have its remedy over against the person who caused the defect. (See note *q* to sec. 409.)

(*p*) The power of the Township Council to act under this section only arises—

1. In case the trustees of any Police Village, or fifteen of the inhabitant householders of any other Unincorporated Village or Hamlet consisting of not less than twenty dwelling houses within an area of 200 acres, petition.

2. *And* in case the petition of such Unincorporated Village or Hamlet, not being a Police Village, is accompanied by a certificate from the Registrar of the County within which the Township lies, that a plan of the Village or Hamlet has been duly deposited in his office according to the registry laws.

Whenever any land or original town or township lot has been surveyed or subdivided into town or village lots or other lots, so

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pass a By-law (*q*) to stop up, sell and convey, or otherwise deal with any original allowance for road lying within the limits of the Village or Hamlet, as the same shall be laid down on the plan, but subject to all the restrictions contained in this Act with reference to the sale of original allowances. (*r*) 29-30 V. c. 51, s. 346.

When village is partly in each of two townships.

**444.** The last section shall apply to a Village or Hamlet situate in two Townships, whether such Townships are in the same or different Counties; (*s*) and in such case the Council of each of the Townships shall have the power thereby conferred, (*t*) as to any original allowance for road lying within that part of the Village or Hamlet which, according to the registered plan, is situate within such Township. (*u*) 29-30 V. c. 51, s. 347.

*Registration of By-laws for Opening Roads.*

By-laws under which roads are opened on private property to be registered.

**445.** All By-laws hereafter to be passed by any Municipal Council, under the authority of which any street, road or highway shall be opened upon any private property, shall, before the same becomes effectual in law, (*a*) be duly regis-

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differing from the manner in which such land was surveyed or granted by the Crown that the same cannot or is not, by the description given of it, easily and plainly to be identified, the person, corporation or company making such survey or subdivision must, within three months from the date of the survey or subdivision, lodge with the Registrar a plan or map of the same, on a scale of not less than one inch to every four chains, showing the number of the Township or town lots, and range or concession; the number or letters of town or village lots, and names of streets, with the magnetic bearing of the same, and other similar information. (See 31 Vic. cap. 20, sec. 75, as amended by 35 Vic. cap. 29.)

(*q*) *May*—permissive. (See note *b* to sec. 412.) The grant here is of a legislative power. (See note *g* to sub. 27 of sec. 384.)

(*r*) See sec 425, sub. 8.)

(*s*) The last section in terms applies only to a Village or Hamlet situate in one and the same Township, as well as in one and the same County, but as villages are often formed at the corners of different Townships, which may or may not be in different Counties, it is by this section made to extend to "a Village or Hamlet situate in *two* Townships, whether such Townships are in the same County or in different Counties." The extension is scarcely sufficient, for there are Villages formed of parts of *more* than two Townships.

(*t*) See note *q* to sec. 443.

(*u*) See note *p* to sec. 443.

(*a*) It is plainly essential to the validity of a By-law under the authority of which a street, road or highway shall be opened through private property, that the By-law be registered as required by this section.

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tered in the Registry Office of the County where the land is situate, (*b*) and for the purpose of registration a duplicate original of such By-law shall be made out, certified under the hand of the clerk and the seal of the Municipality, and shall be registered without any further proof; (*c*) and all By-laws heretofore passed, and all orders and resolutions of the Quarter Sessions heretofore passed, under the authority of which any street, road or highway has already been opened upon any private property, may at the election of any party interested, and at the cost and charges of such party or Municipality, be also duly registered, (*d*) upon the production to the Registrar of a duly certified copy of such By-law under the hand of the Municipal Clerk and seal of such Municipality, (*e*) or by a duly certified copy of such order or resolution of such Quarter Sessions, given under the hand of the Clerk of the Peace (as the case may be). (*f*) 29-30 V. c. 51, s. 348.

As to by-laws already passed.

*In Disputes respecting Roads—who to Administer Oaths.*

**446.** In case of disputes in any Municipality concerning roads, allowances for roads, side lines, boundaries or concessions, within the cognizance of and in the course of investigation before a Municipal Council, the head of the Council may administer an oath or affirmation to any party or witness examined upon the matters in dispute. (*g*) 29-30 V. c. 51, s. 324.

Power to administer oaths in certain cases.

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(*b*) Whenever the Registry Office is only for a Riding less than a County, it is presumed that the By-law shall, in order to its validity, be registered in the Registry Office of such Riding.

(*c*) It is only a duplicate original of the By-law that can be registered, and such duplicate original must be certified under the hand of the Clerk and seal of the Municipality. (See note *e* to sec. 240.) If so certified, it may be registered without further proof. If not so certified, it is apprehended the Registrar may reject it.

(*d*) In the case of streets, &c., *hereafter* opened, the section is imperative. In the case of streets, &c., opened *heretofore*, the duty is optional. (See note *b* to sec. 412.) The option may be exercised by any party interested. If exercised, it is to be at the cost and charges "of such party or the Municipality."

(*e*) See note *e*, to sec. 240.

(*f*) In the case of a certified copy of an order or resolution of Quarter Sessions, no seal is made necessary. If given under the hands of the Clerk of the Peace, no more will be required for purposes of registration.

(*g*) It is not intended to give Municipal Councils jurisdiction to *try* and *determine* disputed boundaries, &c., but only to institute

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## Division XII.—Powers of Municipal Councils as to Drainage and other Improvements paid for by Local Rate.

*Local drainage, by-laws, and funds for. Sec. 447-448.*
*Complaints respecting assessments, how tried. Sec. 449.*
*Quashing by-laws, limitations respecting. Sec. 450.*
*Extension of works to other municipalities. Sec. 451.*
*Mode of apportioning cost. Sec. 452-458.*
*Who to keep in repair. Sec. 459-461.*
*Drainage done by works. Sec. 462.*
*Drainage by private persons. Sec. 463.*
*Local improvements and drainage for same. Sec. 464-467.*
*Sweeping, watering and lighting. Sec. 468.*
*Special rates by County Councils for local improvements in Townships. Sec. 469-470.*

Municipal councils may pass by-laws for deepening streams, &c. drainage, &c.

Examination by engineer.

**447.** In case the majority in number of the owners, as shown by the last revised assessment roll to be resident on the property to be benefited in any part of any Township, City, Town or Incorporated Village, do petition the Council for the deepening of any stream, creek or water-course, or for draining of the property (describing it), (*a*) the Council may procure an examination to be made by an Engineer or Provincial Land Surveyor, of the stream, creek or water-

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such an investigation respecting such roads or lines, &c., as are material to the exercise of the jurisdiction which the Councils possess. The section is founded on sec. 126 of the old Act 12 Vic. cap. 81.

(*a*) This part of the section is in effect the same as sec. 2 of statute 36 Vic. cap. 39, Ont. There are several proceedings under it necessary before the passing of any By-law. The first proceeding necessary is that here authorized—viz., a petition from "the majority in number of the owners, as shown by the last revised assessment roll to be resident on the property to be benefited in *any part* of any Township," &c. It has not yet been decided *what majority* is sufficient to procure the action of the Council. "Four concessions in a Township may be interested in different degrees in a work which would drain all the lands in those concessions; but it might be of more importance to the owners of the lands in *one* of those concessions than to all the owners of the lands in the other three to procure the construction of the work. As at present advised, we do not see that a majority of the resident owners in the one concession would not comply with the terms of the Act." (*Per* Gwynne, J., *In re Montgomery and Raleigh*, 21 U. C. C. P. 381, 395.) The objection that the petition was not signed by the requisite majority is not one that can be entertained by the Court on an application to quash the By-law; at all events, in the absence of fraud or corrupt conduct on the part of those who passed the By-law. (*In re Michie and Toronto*, 11 U. C. C. P. 379; *In re Montgomery and Raleigh*, 21 U. C. C. P. 381.)

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course proposed to be deepened, or of the locality proposed to be drained, and may procure plans and estimates to be made of the work by such Engineer or Surveyor, and an assessment to be made by such Engineer or Surveyor of the real property to benefited by such deepening or drainage, stating as nearly as may be, in the opinion of such Engineer or Surveyor, the proportion of benefit to be derived by such deepening or drainage by every road and lot, or portion of lot; (*b*) and if the Council be of opinion that the deepening of such stream, creek or water-course, or the draining of the locality described, or a portion thereof, would be desirable, the Council may pass By-laws—(*c*)

Plans and estimates.

(1.) For providing for the deepening of the stream, creek or water-course, or the draining of the locality; (*d*)

For deepening streams and drainage.

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(*b*) On receipt of the requisite petition, the Council may, in its discretion, refuse to proceed further. (See note *b* to sec. 412.) But if the Council decide to act on it, the Council may procure—

1. An examination to be made by an Engineer or Provincial Land Surveyor of the streams, &c., proposed to be deepened or of the locality proposed to be drained.

2. Plans and estimates to be made of the work by such Engineer or Surveyor.

3. An assessment to be made by such Engineer or Surveyor of the real property to be benefited, &c., stating as nearly as may be (in the opinion of the Engineer or Surveyor) the proportion of benefit to be derived by such deepening or drainage by *every road and lot, or portion of lot.*

The contention that *all* the lands which will be benefited by the proposed work have not been assessed, or that for any other reason the several assessments made upon the respective lots, or any of them are overcharges, does not constitute ground for moving to quash the By-law. All those matters are matters subject to appeal, and it is there such a contention should be tried and investigated. (*Per* Gwynne, J., *In re Montgomery and Raleigh*, 21 U. C. C. P. 393.)

(*c*) The Council is left, upon receipt of the Engineer's report and other preliminaries, to judge "whether or not the deepening of the stream, &c., or the draining of the locality described or a portion thereof would be desirable," &c. If its opinion be in the affirmative, it may pass the By-law; but if of a negative opinion, there is no power to compel the Council to do so. (See note *b* to sec. 412.)

(*d*) This part of the section is in effect the same as sub. 1 of sec. 2 of 36 Vic. cap 39. The purposes for which such a By-law may be passed are for the deepening of any stream, creek or water-course, or the draining of the locality. The effect of deepening a particular stream, creek or water-course may be more effectually to drain the locality, but there may be localities requiring drainage in the immediate vicinity of which there is no stream, creek or water-course. In either event it is contemplated that a By-law may be asked and passed. (See note *u* to sec. 402, as to streams, creeks and water-courses.)

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For borrowing requisite funds, &c.

(2.) For borrowing, on the credit of the Municipality, the funds necessary for the work, and for issuing the debentures of the Municipality to the requisite amount, in sums of not less than one hundred dollars each, and payable within fifteen years from date, with interest at a rate of not less than five per centum per annum; (*e*)

For levying rate for payment.

(3.) For assessing and levying, in the same manner as taxes are levied, upon the real property to be benefited by the deepening or draining, a special rate sufficient for the payment of the principal and interest of the debentures, and for so assessing and levying the same, as other taxes are levied, by an assessment and rate on the real property so benefited (including roads held by joint stock companies or private individuals), as nearly as may be to the benefit derived by each lot, or portion of lot, and road in the locality: (*f*)

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(*e*) The amount borrowed is to be payable within fifteen years from the date of the By-law, and yet no provision is made for requiring the By-law on the face of it to show the date of its passing. It is necessary to the validity of an ordinary By-law to raise money on the credit of the Municipality, that it should name a day in the financial year in which the same is passed when the By-law shall take effect. (Sec. 248, sub. 1.) This section, however, does not require that such a day should be named in the By-law. (*Per* Gwynne, J., *In re Montgomery and Raleigh*, 21 U. C. C. P. 397.) But even in the case of an ordinary money By-law the Court of Common Pleas refused, after the issue of debentures, to quash the By-law on the ground of the omission. (*In re Mickie and Toronto*, 11 U. C. C. P. 379.) Draper, C. J., said—"I have felt a good deal of doubt whether the Legislature did not intend that in the body of every By-law shall be stated a day upon which it is to take effect. The date on which a By-law is passed does not necessarily form a part thereof, though it may be the practice for some officer of the Corporation to mark the day of its passing thereupon. And I think the Legislature meant that it should not be necessary to refer to anything extrinsic to the By-law, for the purpose of learning when it would or had come into operation. The purchaser of a debenture, for instance, would require to see that it and the By-law under which it was issued were legal, and might on that account require to see when the By-law took effect."

(*f*) This part of the section is in effect the same as sub. 2 of sec. 2 of 32 Vic. cap. 43. A By-law enacted that the drain should be made in accordance with the survey and levels taken by the Engineer; that there should be raised, levied and collected off the lots and parts of lots in the Township to be benefited by making such drain, the sum of $2,696; that the sum of $2,696 should be divided into three equal annual payments, bearing interest at the rate of eight per cent. per annum, first payment to be made in 1871, and to continue in each year till the whole should be paid, for the purpose of paying one part of the cost of said drainage, and the cost incidental thereto assessed upon the lands aforesaid; and the Collector should in each

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Provided always, that any person whose property has been assessed for such deepening or drainage may pay the amount of such assessment, less the interest, at any time before the debentures are issued, in which case the amount of debentures shall be proportionably reduced; (*g*) And provided further, that any agreement on the part of any tenant to pay the rates or taxes of the demised property, shall not Proviso. Proviso.

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year place the same upon the Collector's rate against each lot or part of lot "as set forth in the annexed schedule," to be collected and paid over to the Treasurer, as other taxes were collected and paid over, to form a sinking fund to meet the payment of debentures. It then provided for payment by the Treasurer of the Municipality of the sum of $306 assessed on roads and road allowances. It then provided for the issue of debentures for $2,696, at a rate of interest not exceeding eight per cent. per annum, in sums of not less than $100 each, payable in three years from 15th December, 1870; and, lastly, that if the amount to be collected from such assessment should, by reason of the lands being non-resident, or otherwise, fall short of the sum required to meet the debentures or interest as they became due, the Treasurer should pay such deficiency out of the general funds, and reimburse those funds when the assessment should be levied out of the land. The schedule, which was annexed to and formed part of the By-law, was entitled "Schedule showing the benefits to be derived by each lot from the draining to be performed under the By-law." The objection raised against the By-law was that it did not properly provide for a special rate sufficient to include a sinking fund for the payment of the debentures therein mentioned, but provided for the levying and raising of certain instalments with interest, and did not state or provide from what date such interest was to be charged. But the By-law was sustained as against the objection. (*In re Montgomery and Raleigh*, 21 U. C. C. P. 381.) "Upon a careful consideration of the section, we do think the objection is not insurmountable." (*Per* Gwynne, J., *Ib.* 395.) The learned Judge, after using the language quoted, made a critical examination of the section, leading to a particular construction, but which examination is too long for insertion here, and then concluded: "This section of the By-law is, we think, open to this construction, and being so construed seems to be free from the objection taken." Notwithstanding, it is recommended that such a By-law be not made a precedent under this Act. It is inserted here not as a guide, but as a warning against its use, or the use of any By-law at all like it. The Legislature has very wisely provided a form of By-law which shall (*mutatis mutandis*) be used. (See sec. 448.)

(*g*) This is a new and useful provision. It is in effect an authority for the payment of a debt in advance; and as an inducement there is a rebate of interest. But it is to be observed that the privilege can only be exercised "before the debentures are issued." After the issue of the debentures the debt for the whole amount is contracted, and it rests with the purchaser, who thereby becomes the creditor of the Municipality, to say whether he will accept payment of any of the debentures before maturity, and, if so, on what terms as to rebate of interest or otherwise.

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apply to or include the charges or assessments for draining under this section, unless such agreement shall in express terms mention or refer to such charges or assessments, and as payable in respect of drainage works; but in cases of contracts of purchase or of leases giving the lessee a right of purchase, the said charges or assessments shall be added to the price, and shall be paid (as the case may be) by the purchaser, or by the lessee in case he exercises such right of purchase; (*h*)

For providing how assessment be paid.

(4.) For regulating the times and manner in which the assessment shall be paid; (*i*)

For ascertaining the property liable to the rate.

(5.) For determining what real property will be benefited by the deepening or draining, and the proportion in which the assessment should be made on the various portions of lands so benefited, (*k*) and subject in every case of complaint, by the owner or person interested in any property assessed, whether of overcharge, or of undercharge of any other property assessed, or that property that should be assessed has been wrongfully omitted to be assessed, to proceedings for trial of such complaint, and appeal therefrom, in like manner as nearly as may be as on proceedings for the trial of complaints, as set forth in the sixtieth, sixty-first, sixty-third, sixty-fifth, sixty-sixth, sixty-seventh, sixty-eighth, sixty-

32 V. (Ont) c. 36.

(*h*) The purpose of the By-law is to improve the freehold. The money to be raised under the By-law is not so much a tax as the consideration for the improved drainage. This being so, the obligation to pay is thrown upon the owner of the freehold, and not upon the tenant, who has merely covenanted or agreed in the ordinary form to pay taxes. One exception, however, is where, by the lease, he has expressly agreed to pay charges in respect to drainage works. Another is where the lease contains a contract of purchase, in which case such charges shall be added to the price to be paid by the purchaser. If it were not for this express exemption, it might be held that ordinary tenants under a covenant to pay taxes would be bound to pay the drainage rate. (See *In re Michie and Toronto*, 11 U. C. C. P. 379.)

(*i*) This part of the section is in effect the same as sub. 3 of sec. 2, 32 Vic. cap 43, Ont.

(*k*) This part of the section is in effect the same as sub. 4 of sec. 2 of 32 Vic. cap 43, Ont. It was held not to be necessary for the By-law to specify the *mode* of ascertaining and determining the property to be benefited. (*In re Montgomery and Raleigh*, 21 U. C. C. P. 381.) Held also, that a schedule annexed to the By-law, showing the benefit to be derived by each lot from the drainage to be performed under the By-law, which schedule was declared to be part of the By-law, sufficiently indicated that the lands so assessed were assessed as the only lands within the Municipality regarded as benefited by the proposed work. (See note *f*, page 456.)

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ninth and seventieth sections of "The Assessment Act of 1869;" (*l*)

(6.) Trial of such complaints shall be had in the first instance by and before a Court of Revision, which the Council shall, from time to time, as occasion may require, hold, on some day not earlier than twenty nor later than thirty days from the day on which the By-law shall be first published, notice of which shall be published with the By-law during the first three weeks of its publication; and such Court shall be constituted and have the powers referred to in sections numbered from fifty-one to fifty-eight, both inclusive, of the said Assessment Act; and in case of appeal to the Judge, junior or acting Judge of the County Court, he shall have the same powers and duties, and the Clerks of the Municipality and Division Court respectively shall have the same powers and duties, as nearly as may be, as contained in sections numbered from sixty-three to seventy, both inclusive, of such Act. (*m*) 35 V. c. 26, ss. 1 and 2.

Court of Revision to have primary jurisdiction.

Appeal to County Judge.

**448.** Such By-law shall (*mutatis mutandis*) be in the form or to the effect following:—(*n*)

Form of by-law.

A By-law to provide for draining parts of (*or* for the deepening of in, *as the case may be*) the Township of , and for borrowing, on the credit of the Municipality, the sum of for completing the same. (*o*)

Provisionally adopted the day of , A. D. (*p*)

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(*l*) See notes to secs. 60, 61, 63, 65, 66, 67, 68, 69 and 70 of the Assessment Act.

(*m*) "The object of the Act, as it appears to me, is to make the appeal to the Council, if not appealed from to the County Judge and the decision of the County Court Judge, if the appeal should be carried to him, as final and conclusive as the decision of the Court of Revision and the of County Court Judge respectively are under the Assessment Act, which is an Act that may be said to be in *pari materia* with the Municipal Institutions Act, of which 32 Vic. cap. 43 (the former Drainage Amendment Act) is but a part. Such a mode of decision upon the several matters being provided by the Act, seems to conclude the idea that these matters can be opened upon a motion to quash the By-law, and we are of opinion that they cannot." (*Per* Gwynne, J., *In re Montgomery and Raleigh*, 21 U. C. C. P. 393.) This part of the section is in effect the same as sec. 3 of 36 Vic. cap. 39, Ont.

(*n*) The words are *shall* be (not *may* be) in the *form* or to the *effect* following. (See note *h* to sec. 238.)

(*o*) See note *d* to sub. 1 of sec. 447.

(*p*) See note *e* to sub. 2 of sec. 447.

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Whereas a majority in number of the owners, as shown by the last revised assessment roll to be resident on the property hereinafter set forth, to be benefited by the drainage (*or* deepening, *as the case may be*), have petitioned the Council of the said Township of , praying that (*q*) (*here set out the purport of the petition, describing generally the property to be benefited*); (*qq*)

And whereas, thereupon the said Council procured an examination to be made by , being a person competent for such purpose, of the said locality proposed to be drained (*or* the said stream, creek or water-course proposed to be deepened, *as the case may be*), and has also procured plans and estimates of the work to be made by the said , and an assessment to be made by him of the real property to be benefited by such drainage (*or* deepening, *as the case may be*), stating, as nearly as he can, the proportion of benefit which, in his opinion, will be derived in consequence of such drainage (*or* deepening, *as the case may be*), by every road and lot or portion of lot; the said assessment so made, and the report of the said in respect thereof, and of the said drainage (*or* deepening, *as the case may be*), being as follows: (*here set out the report and assessment of the Engineer or Surveyor employed*); (*r*)

And whereas the said Council are of opinion that the drainage of the locality described (*or* the deepening of such stream, creek or water-course, *as the case may be*) is desirable; (*s*)

Be it therefore enacted by the said Municipal Council of the said Township of , pursuant to the provisions of an Act of the Legislature of Ontario passed in the thirty-sixth year of Her Majesty's reign, chaptered forty-eight.

1st. That the said report, plans and estimates be adopted, and the said drain (*or* deepening, *as the case may be*), and the works connected therewith, be made and constructed in accordance therewith.

2nd. That the Reeve of the said Township may borrow on the credit of the Corporation of the said Township of (*t*)

(*q*) See note *ss* to sub. 6 of sec. 248.
(*qq*) See note *a* to sec. 447.
(*r*) See note *b* to sec. 447.
(*s*) See note *c* to sec. 447.
(*t*) See note *e* to sub. 2 of sec. 447.

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the sum of , being the funds necessary for the work, and may issue debentures of the Corporation to that amount, in sums of not less than one hundred dollars each, and payable within years from the date thereof, with interest at the rate of per centum per annum; that is to say, in (*insert the manner of payment, whether in annual payments or otherwise*); such debentures to be payable at , and to have attached to them coupons for the payment of interest. (*u*)

3rd. That for the purpose of paying the sum of (*four hundred and seventy-five dollars*), being the amount charged against the said lands so to be benefited as aforesaid, other than lands (*or* roads, *or* lands and roads) belonging to the Municipality, and to cover interest thereon for years, at the rate of (*five*) per cent. per annum, the following special rates, over and above all other rates, shall be assessed and levied (in the same manner and at the same time as taxes are levied) upon the undermentioned lots and parts of lots; and the amount of the said special rates and interest assessed as aforesaid against each lot or part of lot respectively shall be divided into equal parts, and one such part shall be assessed and levied as aforesaid, in each year, for years after the final passing of this By-law, during which the said debentures have to run. (*v*)

| Concession. | Lot or Part of Lot. | Acres. | Value of Improvement. | To cover Interest for (10) years at (5) per cent. | Total Special Rate. | Annual Assessment during each year for (10) years. |
|---|---|---|---|---|---|---|
| | | | $ cts. | | | |
| | 5 | 200 | 75 00 | | | |
| | S ½ 6 | 100 | 50 00 | | | |
| | N ½ 6 | 50 | 30 00 | | | |
| | S W ¼ 8 | 100 | 80 00 | | | |
| | 9 | 200 | 150 00 | | | |
| | S ½ and N ¼ 10 | 150 | 90 00 | | | |
| | | | 475 00 | | | |
| Chargeable to Municipality for roads (*or* lands, *or* roads and lands). | | | 120 00 | | | |
| | | | 595 00 | | | |

4th. For the purpose of paying the sum of one hundred and twenty dollars, being the total amount assessed as aforesaid

(*u*) See sub. 6 of sec. 248, and notes thereto.

(*v*) See note *f* to sub. 3 of sec. 447.

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against the said roads (*or* lands, *or* roads and lands) of the said Municipality, and to cover interest thereon for years at the rate of (*five*) per cent. per annum, a special rate of in the dollar shall, over and above all other rates, be levied (in the same manner and at the same time as taxes are levied) upon the whole ratable property in the said Township of , in each year, for the period of years after the date of the final passing of this By-law, during which the said debentures have to run.

Amendment of by-law.

In the event of the assessment being altered by the Court of Revision or Judge, the By-law shall, before being finally passed, be amended so as to correspond with such alteration by the Court of Revision or Judge (*or as the case may be*).

Before final passing, by-law to be published.

Also notice as to when and how proceedings to quash to be taken.

**449.** Before the final passing of the By-law it shall be published once or oftener in every four weeks in some newspaper in the Municipality; or, if no newspaper be published therein, then in some newspaper published in the nearest Municipality in which a newspaper is published, (*a*) together with a notice that any one intending to apply to have such By-law, or any part thereof, quashed, must, within ten days after the final passing thereof, serve a notice in writing upon the Reeve or other head officer, and upon the Clerk of the Municipality, of his intention to make application for that purpose to one of Her Majesty's Superior Courts of law at Toronto, during the term next ensuing the final passing of the By-law, (*b*) and the Council shall, at least three weeks before the final passing of the By-law, post up conspicuously a copy thereof, and of the said notices, at four or more of the most public places of the Municipality. (*c*) 35 V. c. 26, s. 3.

Copy of by-law and notices to be posted up.

If no application to quash made in time specified, by-law to be valid, notwithstanding defects.

**450.** In case no such notice of intention to make application to quash a By-law be served within the time limited for that purpose in the preceding section, the By-law shall,

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(*a*) The first part of this section is in effect the same as sec. 4 of 36 Vic. cap. 39, Ont.

(*b*) This is more than is required in the case of the quashing of any other description of By-law. All that is in general necessary is that the application to quash should be made within one year after the passing of the By-law. (Sec. 241.) In the case of a By-law promulgated, no application can be entertained after the term next after promulgation. (Sec. 242.) But in neither case is it necessary to serve a notice of intention to make the application.

(*c*) See sec. 424, sub. 1, and notes thereto.

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notwithstanding any want of substance or form, either in the By-law itself or in the time and manner of passing the same, be a valid By-law. (*d*)

When work may be extended beyond limits of municipality.

**451.** Whenever it is necessary to continue the deepening or drainage aforesaid beyond the limits of any Municipality, the Engineer or Surveyor employed by the Council of such Municipality may continue the survey and levels into the adjoining Municipality, (*e*) until he finds fall enough to carry the water beyond the limits of the Municipality in which the deepening or drainage was commenced. 35 V. c. 26, s. 5.

When lands, &c. in adjoining municipality may be charged, though works not carried into such municipality.

**452.** When the deepening and drainage do not extend beyond the limits of the Municipality in which they are commenced, but, in the opinion of the Engineer or Surveyor

(*d*) This is a most extraordinary enactment. It is in effect the same as sec. 5 of 36 Vic. cap. 39, Ont. In the case of an ordinary By-law, if the application to quash be not made within the time in that behalf limited (see note *b* to sec. 449), the Court will not entertain it. But the validity of the By-law is subject to be incidentally questioned in any suit or proceeding that may afterwards arise in reference to it. (See note *s* to sec. 464.) Here it is provided that if no notice of intention to make an application to quash the By-law, such as made necessary by the preceding section, be served within the time limited for that purpose, the By-law shall, notwithstanding "any want of *substance* or *form*, either in the By-law itself or in the time or manner of passing" it, be "a *valid By-law.*" In other words, that which by reason of some substantial defect, is utterly void when passed, afterwards becomes a valid By-law in consequence of the neglect of some person interested, within ten days after the passing of the By-law to give notice of his intention to make application to quash the By-law. This is certainly a vigorous application of the maxim, "*Vigilantibus et non dormientibus jura subveniunt.*" The section has not even the qualifying words "*So far* as the same ordains, prescribes or directs anything *within the proper competence of the Council,*" used in sec. 239. (See note *j* to that section.) But it remains to be decided whether the omission of those words, either designedly or accidentally, is to be held to confer a power *sub modo* to pass a By-law clearly beyond the competence of the Council.

(*e*) Apparently, the Engineer or Surveyor employed by the Council is, in the first instance, to judge of the necessity of continuing the deepening or drainage beyond the limits of the Municipality. If he think it necessary he may continue the survey and levels into the adjoining Municipality, "*until* he finds fall enough to carry the water beyond the limits of the Municipality in which the deepening or drainage was commenced." No Municipality, and no officer of any Municipality, has power, in the interest of the public, to drain water on to the land of any proprietor, and lodge it there against the will of the proprietor. (See note *a* to sub. 1 of sec. 425.) This section is in effect the same as sec. 6 of 36 Vic. cap. 39, Ont.

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aforesaid, benefit lands in an adjoining Municipality, or greatly improve any road lying within any Municipality, or between two or more Municipalities, (*f*) then the Engineer or Surveyor aforesaid shall charge the lands to be so benefited, and the Corporation, person or company whose road or roads are improved, with such proportion of the costs of the works as he may deem just; and the amount so charged for roads, or agreed upon by the arbitrators, shall be paid out of the general funds of such Municipality or company. (*g*) 35 V. c. 26, s. 6.

Report as to which municipality to bear expense.

**453.** The Engineer or Surveyor aforesaid shall determine and report to the Council by which he was employed, whether the deepening or drainage shall be constructed and maintained solely at the expense of such Municipality, or whether it shall be constructed and maintained at the expense of both Municipalities, (*h*) and in what proportion. 35 V. c. 26, s. 7.

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(*f*) This section is in effect the same as sec. 7 of 36 Vic. cap. 39, Ont. The deepening or drainage may be either confined to the particular Municipality in which commenced, or extended to and through an adjoining Municipality. (See note *e* to sec. 451.) But even in the former case the deepening or drainage may be so contiguous to the adjoining Municipality as to benefit lands therein, or greatly to improve roads lying therein, or between two or more Municipalities belonging to any Corporation, person or company. And the policy of the Act being that land benefited by deepening or drainage should contribute to the cost thereof, this policy is to be carried out, as it were, regardless of Municipal boundaries.

(*g*) The Engineer or Surveyor is in the first instance made the judge of the amount to be paid. It may be any sum that "*he* may deem *just*." Provision is hereafter made for appealing from his decision. (Sec. 457.) The amount, whatever it may be when ultimately determined, is to be paid out of the general funds of such Municipality or company.

(*h*) It may be proper under certain circumstances to subject the particular Municipality in which the deepening or drainage is commenced to the entire cost thereof (see note *f supra*), or it may be proper to subject the adjoining Municipality or some portion thereof, or some roads therein, to a proportionate part of the cost. (*Ib.*) It is for the Engineer or Surveyor in the first instance to determine the matter. He is required to report his determination to the Council that employed him. If he find that the work should be done at the expense of both Municipalities, he is also to report "in *what* proportion" each should contribute. If necessary to make the report intelligible that it should be accompanied by plans or specifications, such plans and specifications must accompany the report. (See secs. 447 and 454.) This section is in effect the same as sec. 8 of 36 Vic. cap. 39, Ont.

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**454.** The Engineer or Surveyor aforesaid, (*i*) when necessary, (*j*) shall make plans and specifications of the deepening or drainage to be constructed, and charge the lands to be benefited by the work as provided herein. (*k*) 35 V. c. 26, s. 8. Plans, &c.

**455.** The Council of the Municipality in which the deepening or drainage is to be commenced, (*kk*) shall serve the head of the Council of the Municipality into which the same is to be continued, or whose lands or roads are to be benefited without the deepening or drainage being continued, (*l*) with a copy of the report, plans and specifications of the Engineer or Surveyor aforesaid, when necessary, so far as they affect such last mentioned Municipality; (*m*) and unless the same is appealed from as hereinafter provided, it shall be binding on the Council of such Municipality. (*n*) 35 V. c. 26, s. 9. Council of municipality wherein work begun to notify municipality to be benefited.

**456.** The Council of such last-mentioned Municipality shall, within four months from the delivery to the head of the Corporation of the report of the Engineer or Surveyor, as provided in the next preceding section, (*o*) pass a By-law or By-laws to raise such sum as may be named in the report, (*p*) or, in case of an appeal, for such sum as may be determined by the arbitrators, in the same manner and without such other provisions as would have been proper as if a majority Municipality so notified shall proceed to raise necessary amounts.

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(*i*) *i. e.*, the Engineer or Surveyor appointed by the Council to examine the creek, stream or water-course proposed to be deepened, or the locality proposed to be drained. (See note *c* to sec. 447.) This section is the same as sec. 9 of 36 Vic. cap. 39, Ont.

(*j*) See note *h* to sec. 453.

(*k*) See note *f* to sec. 452.

(*kk*) This section is the same as sec. 10 of 36 Vic. cap. 39, Ont.

(*l*) See note *h* to sec. 453.

(*m*) Two things are to be observed:

1. What is to be served.

2. Upon whom service is to be effected.

1. The service is to be of a copy of the report, plans and specifications of the Engineer or Surveyor, so far as they affect the adjoining Municipality. This is to be done when necessary.

2. The service is to be on the head of the Municipality. This is sufficient. It is not like the service of the notice under sec. 449, which must be on the head of the Municipality *and* the Clerk.

(*n*) See note *m* to sec. 447.

(*o*) This section is the same as sec. 11 of 36 Vic. cap. 39, Ont.

(*p*) See note *g* to sec. 453.



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of the owners resident on the lands to be taxed had petitioned, as provided in the four hundred and forty-seventh section of this Act. (*q*) 35 V. c. 26, s. 10.

But such municipality may appeal.

**457.** The Council of the Municipality into which the deepening or drainage is to be continued, or whose lands, road or roads are to be benefited without the deepening or drainage being carried within its limits, (*r*) may, within twenty days from the day on which the report was served on the head of the Municipality, (*s*) appeal therefrom; (*t*) in which case they shall serve the head of the Corporation from which they received the report with a written notice of appeal. Such notice shall state the ground of appeal, the name of an Engineer or other person as their arbitrator, (*u*) and calling upon such Corporation to appoint an arbitrator in the matter on their behalf within ten days after the service of such notice. (*v*) 35 V. c. 26, s. 11.

Proceedings thereon.

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(*q*) The obligation to pay for deepening or drainage may arise either when a majority of owners in the particular Municipality petition under section 447, and a By-law is thereupon passed, or when such a petition and such a By-law is passed in an adjoining Municipality, and under the operation of which land in the particular Municipality is likely to be benefited thereby, and has been so charged by the Engineer or Surveyor. This section provides for the latter alternative.

(*r*) The first part of this section is in effect the same as section 12 of 36 Vic. cap. 39, Ont.

(*s*) As to computation of time, see note *a* to sec. 128.

(*t*) The appeal can only be had within the time and in the manner herein directed. The right of appeal is given, as it were, only on certain conditions. The right can only be exercised within twenty days from the day on which the report was served on the head of the Municipality. The mode of its exercise is by service within that time of a written notice of appeal.

Such notice must state—

1. The ground of the appeal;

2. The name of the Engineer or other person appointed arbitrator for the Municipality appealing; *and*

3. Call upon the other Municipality within ten days after service to appoint an arbitrator on their behalf. (See sec. 61, sub. 1, of the Assessment Act, and notes thereto.)

(*u*) See notes *a* and *b* to sec. 277, and note *d* to sec. 279.

(*v*) Sec. 12 of 36 Vic. cap. 39, proceeds: "And in default thereof it shall be lawful for the Council of the Municipality appealing therefrom to appoint such second arbitrator, and the two arbitrators so appointed shall forthwith appoint a third arbitrator in the matter: Provided always that in no case shall the Engineer or Surveyor aforesaid employed to make surveys, plans and specifications, or a member or officer of any Council concerned, be appointed or act as arbitrator." It is then by sec. 13 of the same Act declared: "That if, after the arbitrators have been appointed as aforesaid, they fail or

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**458.** The arbitrators shall be appointed by the parties in manner hereinbefore provided by the sections of this Act, with reference to arbitration, and shall proceed as therein directed; (*w*) Provided always, that in no case shall the Engineer or Surveyor employed to make surveys, plans and specifications be appointed or act as arbitrator. (*x*) *Vide* 35 V. c. 26, ss. 11-15.

Arbitrators shall be appointed, &c.

**459.** After such deepening or drainage is fully made and completed, it shall be the duty of each Municipality, in the proportion determined by the Engineer or Arbitrators (*as the case may be*), or until otherwise determined by the Engineer or Arbitrators, under the same formalities, as nearly as may be, as provided in the preceding sections, to preserve, maintain and keep in repair the same within its own limits, either at the expense of the Municipality, or parties more immediately interested, or at the joint expense of such parties and the Municipality, as to the Council, upon the report of the Engineer or Surveyor, may seem just; (*a*)

Each municipality to contribute to maintaining such deepening or drainage in proportions fixed by engineer.

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neglect for the space of six days to appoint a third arbitrator, the Judge of the County Court of the County in which the Municipality appealing is situated shall, within four days after a request, in writing, made upon him by either of the two arbitrators appointed as above, appoint the third arbitrator." So "each arbitrator, before proceeding to try the matter of the arbitration, shall take and subscribe the following oath (or, in case of those who affirm, make and subscribe the following affirmation) before any Justice of the Peace, which oath or affirmation shall be filed with the award:

"I, A. B., do swear (*or* affirm) that I will well and truly try the matter referred to me by the parties, and a true and impartial award make in the premises, according to the evidence and my skill and knowledge. So help me God." (Sec. 14.) "The arbitrators shall, within twenty days after the appointment of the third arbitrator, meet at such place as they may agree upon, and shall then hear and determine the matter in dispute, and make their award in triplicate, which shall be binding on all parties; and one copy thereof shall be filed with the Clerk of each of the Municipalities interested, and one shall be filed with the Registrar of Deeds for the County in which either of the Municipalities are situate." (Sec. 15.) "In case of difference between the arbitrators, the decision of any two of them shall be conclusive." (Sec. 16.)

(*w*) See note *v* to sec. 457. See also sec. 277, *et seq.*

(*x*) This part of the section is in effect the same as the latter part of sec. 12 of 36 Vic. cap. 39, Ont. See note *v* to sec. 457. See also note *c* to sec. 288.

(*a*) A provision for the construction of a drain would be ineffective unless some provision were made for the maintenance of the drain when constructed. It is here, in general terms, made the duty of each Municipality "to preserve, maintain and keep in repair" so much of the drain as is within its own limits. This may be either at the expense of the Municipality, or parties more immediately

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Provision for case of neglect, &c.

Liability for damage.

and any such Municipality neglecting or refusing to do so, upon reasonable notice in writing being given by any party interested therein, shall be compelled, by *mandamus* to be issued by any Court of competent jurisdiction, to make from time to time the necessary repairs to preserve and maintain the same, (*b*) and shall be liable to pecuniary damage to any person who, or whose property shall be injuriously affected by reason of such neglect or refusal. (*c*) 35 V. c. 26, s. 16.

When works not extended beyond limits of municipality commencing same, &c. or not benefit any other municipality, works to be maintained by municipality commencing same.

**460.** In any case wherein, after such deepening or drainage is fully made and completed, the same has not been continued into any other Municipality than that in which the same was commenced, or wherein the lands or roads of any such other Municipality are not benefited by such deepening or drainage, (*d*) it shall be the duty of the Municipality making such deepening and drainage to preserve, maintain and keep in repair the same at the expense of the lots, parts of lots and roads, as the case may be, as agreed upon and shown in the By-law when finally passed; (*e*) Provided always, that the Council may, from time to time, change such assessment on the report of an Engineer or Surveyor appointed by them to examine and report on such drain, deepening and repairs, (*f*) subject to the like rights of appeal as the persons charged would have in the case of an original assessment. (*ff*) *Vide* 35 V. c. 26, s. 16.

Proviso.

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interested, or at the joint expense of both. The section is the same as the first part of sec. 17 of 36 Vic. cap. 39, Ont.

(*b*) *Mandamus* is not the most appropriate remedy to compel a Municipal Corporation to keep a highway in repair. Indictment is the Common Law mode of procedure in such a case. (See note *o* to sec. 409.) But in the case of a drain the reason for the preference of an indictment fails. Hence the remedy by *mandamus* is, under this section, the express remedy. It cannot be invoked unless there be a neglect or refusal on the part of the opposing Municipality, after reasonable notice in writing given by any party interested therein.

(*c*) See note *o* to sec. 409.

(*d*) See note *h* to sec. 453.

(*e*) See sec. 448.

(*f*) This section, so far, is the same as the latter part of sec. 17 of 36 Vic. cap. 39, Ont. The power is from "time to time" to change the assessment. But this can only be done on the report of an Engineer or Surveyor appointed to examine and report on the drain, deepening or repairs. Notice of such change should of course be given to the parties concerned, so that they may, if dissatisfied or aggrieved, appeal therefrom.

(*ff*) This part of the section is not retained in sec. 17 of 36 Vic. cap. 39, Ont. Provision is made by the last mentioned Act for the

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Case of a drain being used by another municipality.

**461.** Should a drain already constructed, or hereafter constructed, by a Municipality, be used as an outlet, or otherwise, by another Municipality, company or individual, such Municipality, company or individual using the same as an outlet, or otherwise, (*g*) may be assessed for the construction and maintenance thereof, in such proportion and amount as shall be ascertained by the Engineer, Surveyor or arbitrators under the formalities provided in the preceding sections. 35 V. c. 26, s. 17.

Disputes as to damage done by works to be referred to arbitration.

**462.** Should any dispute arise between individuals, or between individuals and a Municipality, or company, or between a company and Municipality, or between Municipalities, as to damages alleged to have been done to the property of any Municipality, individual or company in the construction of drainage works, (*h*) or consequent thereon, (*i*)

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sale of the debentures to the Provincial Government. (Secs. 19, 20, 21, 22 and 24.) After investment by the Government, the debentures are to be deemed valid to all intents and purposes. (Sec. 23.) Special provision is made for the collection of the amount of such debentures when purchased by the Government. (Sec. 25.) And the Act is made applicable to certain drainage By-laws passed before the Act took effect. (Sec. 26.)

(*g*) The construction of a drain costs money; where such a drain is constructed by a Municipal Corporation, those whose land is benefited thereby are called upon to pay towards the cost of construction and maintenance. (Sec. 447.) If such a drain be used by another Municipality, company or individual as an outlet, or otherwise, it is only just that such Municipality, company or individual should be assessed a proportionate part for construction and maintenance. The proportionate part is, in the first instance, to be ascertained by the Engineer or Surveyor, subject to appeal, as provided in the preceding sections. It only remains to be noticed that this section is, on the face of it, applicable "to a drain *already* constructed," as well as to drains hereafter to be constructed. This section is the same as sec. 18 of 36 Vic. cap. 39, Ont.

(*h*) The ordinary mode of redress for damages alleged to have been done to property in the construction of public works, or arising therefrom, in the absence of legislative provision to the contrary, is an action. But where the Legislature has provided a special mode of determining such matters, that mode and no other is the one to be followed. (See *Vestry of St. Pancras* v. *Battersbury*, 2 C. B. N. S. 477.)

(*i*) *Consequent thereon.* It has been recently held that a party owning a house in which he carried on an inn, was not entitled to be compensated for the indirect injury to his trade resulting from the diversion of traffic caused by an unauthorized act of lowering the roadway, but only for direct structural injury occasioned by the unauthorized interference with his cellar. (*Bigg* v. *London*. L. R. 15 Eq. 376; but see *Richet* v. *Metropolitan Railway Co.*, L. R. 2

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then the Municipality, company or individual complaining may refer the matter to arbitration, as provided in this Act; (*k*) and the award so made shall be binding on all parties. (*l*)

Drains into adjoining lots or across highways, &c.

**463.** In case any person should find it necessary to continue an under-drain into an adjoining lot or lots, or across or along any public highway, for the purpose of an outlet thereto, and in case the owner of such adjoining lot or lots, or the Council of the Municipality, refuse to continue such drain to an outlet, or to join in the cost of the continuation of such drain, then the firstly-mentioned person shall be at liberty to continue his said drain to an outlet through such adjoining lot or lots, or across or along such highway; (*m*) and in case of any dispute as to the proportion of cost to be borne by the owner of any adjoining lot or Municipality, the same shall be determined by the fence viewers, in the same manner as disputes within the Fence Viewers' Act, excepting (*mm*) as to the amount of such award, which shall be finally decided by the fence viewers, irrespective of the provisions of section fourteen of said Fence Viewers' Act, (*n*) and their award shall be final. (*nn*) 37 V. c. 16, s. 20.

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H. L. 175; *Buccleugh* v. *Metropolitan Board of Works*, L. R. 5 H. L. C. 418; *Beckett* v. *Midland Railway Co.*, L.R. 3 C. P. 82; *McCarthy* v. *Metropolitan Board of Works*, L. R. 7 C. P. 508, s. c. L. R. 8 C. P. 191.)

(*k*) See sec. 277, *et seq.*

(*l*) See note *h* to sec. 290.

(*m*) This section is new. It is in effect the same as sec. 28 of 36 Vic. cap. 39, Ont., and is a re-enactment with amendments of sec. 463 of 36 Vic. cap. 48. Its provisions are important. No man or no Municipality has a right, in the absence of legislation to the contrary, without the consent of the owner of adjoining property, to enter upon such property for the purpose of continuing an under-drain, or for any similar purpose. The power is here to some extent conferred. It is to continue the drain "to an outlet" "through such adjoining lot or lots, or across or along such highway." Care must be taken by the person exercising the power not to make such adjoining land or such adjoining highway a receptacle for water drained off his land. (See note *b* to sub. 1 of sec. 425.)

(*mm*) This exception was introduced into the section here annotated by the Municipal Amendment Act of the last session of the Parliament of Ontario.

(*n*) The Legislature of Ontario during its last session passed a new Act respecting line fences. It repeals chapter fifty-seven of the Consolidated Statutes of Upper Canada, and chapter forty-six of the Statutes of Ontario, "so far as they affect line fences."

(*nn*) The award of fence viewers is held conclusive as to matters within their jurisdiction. (*Stedman* v. *Wasley*, R. & H. Digest E. T.

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**464.** The Council of every City, Town and Incorporated Village (*o*) may pass By-laws (*p*) for the following purposes: City, town and village councils may make by-laws for—

(1.) For providing the means of ascertaining and determining what real property will be immediately benefited by any proposed improvement, the expense of which is proposed to be assessed as hereinafter mentioned upon the real property immediately benefited thereby; and of ascertaining and determining the proportions in which the assessment is to be made on the various portions of the real estate so benefited, (*q*) subject in every case to an appeal to the Judge of the County Court, in the same manner and on the same terms, as nearly as may be, as an appeal from the Court of Revision in the case of an ordinary assessment; 29-30 V. c. 51, s. 301, sub. 1; 31 V. c. 30, s. 35; 34 V. c. 30, s. 10. Ascertaining the real property to be benefited by a local improvement, &c. Appeal.

(2.) For assessing and levying upon the real property to be immediately benefited by the making, enlarging or prolonging of any common sewer, or the opening, widening, prolonging or altering, macadamizing, grading, levelling, paving or planking of any street, lane or alley, public way or place, or of any sidewalk, or any bridge forming part of a Assessing and levying upon real property benefited by certain public works undertaken on a petition, &c.

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4 Vic. MSS., "Fence Viewers," 213; *Short* v. *Parmer et al*, 24 U. C. Q. B. 633.) The Court has no power summarily to set aside their award. (*In re Cameron and Kerr*, 25 U. C. Q. B. 533.) But if the award be from any cause bad, it will not be a defence for anything done under it. (*Malone* v. *Faulkner*, 11 U. C. Q. B. 116; *Murray* v. *Dawson*, 17 C. P. 588; *Murray* v. *Dawson*, 19 C. P. 314; *Dawson* v. *Murray*, 29 U. C. Q. B. 464; see further, sec. 62 of the Assessment Act, and notes thereto.)

(*o*) The 29 & 30 Vic. cap. 51, sec. 301, was, as originally framed, restricted to Cities. It was by statute 31 Vic. cap. 30, sec. 35, Ont., extended to Towns, and afterwards by the 34 Vic. cap. 30, sec. 10, Ont., extended to Incorporated Villages.

(*p*) Discretionary. (See note *b* to sec. 412.)

(*q*) The powers conferred are to pass By-laws for the following purposes:

1. For providing the means of *ascertaining* and *determining* what real property will be immediately benefited, &c.
2. For *ascertaining* and *determining* the proportions in which the assessment is to be made, &c.

*Subject* in every case to an appeal to the Judge of the County Court.

Neither of the Superior Courts of Law will entertain an application to set aside a By-law on a matter of fact, which, according to this Act, or a By-law passed under it, should be ascertained and determined by an officer of the Corporation, in the absence of fraud or corrupt conduct being imputed to such officer. (See *In re Michie and Toronto*, 11 U. C. C. P. 379; see also, *In re Montgomery and Raleigh*, 21 C. P. 331.)

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highway therein, (*r*) on the petition of at least two-thirds in number and one-half in value of such real property, of the owners of such real property, (*s*) a special rate, sufficient to

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(*r*) The local improvements contemplated are—

1. Making,
2. Enlarging,
3. Prolonging,

} *any* common sewer.

1. Opening,
2. Widening,
3. Prolonging,
4. Altering,
5. Macadamizing,
6. Grading,
7. Levelling,
8. Paving,
9. Planking,

} *any* street, lane, alley, public way, place, sidewalk, or any bridge forming part of a highway thereon.

(*s*) The power to pass the By-law is here made dependent on the fact of there being a petition of at least two-thirds in number and one-half in value of the real property to be immediately benefited. Besides, it is expressly declared that no such local improvement shall be undertaken by the Council, otherwise than on the petition of two-thirds in number and one-half in value of the owners of the real property to be directly benefited thereby. (Sec. 465.) The want of a petition signed by the requisite number and value, unless there be legislation to the contrary, invalidates the proceeding. (see note *b* to sec. 465), and, in general, makes void the assessment. (*Henderson* v. *Baltimore*, 8 Md. 352; *Carron* v. *Martin*, 2 Dutch, N. J. 594; *Camden* v. *Mulford*, 2 Dutch, 49; *State* v. *Elizabeth*, 1 Vroom. N. J. 176; *Kyle* v. *Malin*, 8 Ind. 34; *State* v. *Hand*, 2 Vroom. N. J. 547; *State* v. *Orange*, 32 N. J. 49; *Baltimore* v. *Eschbach*, 18 Md. 276; *Wells* v. *Burnham*, 20 Wis. 112; *Covington* v. *Casey*, 3 Bush. (Ky.) 698; *Lexington* v. *Headley*, 5 Bush. (Ky.) 508; *Burnett* v. *Sacramento*, 12 Cal. 76; *McGuinn* v. *Peri*, 16 La. An. 393; *Litchfield* v. *Vernon*, 41 N. Y. 123; *St. Louis* v. *Clemens*, 36 Mo. 467; *Louisville* v. *Hyatt*, 2 B. Mon. 177; *Haynes* v. *Copeland*, 18 U. C. C. P. 150.) And a Court of Equity would grant an injunction against enforcing such a rate. (*Holland* v. *Baltimore*, 11 Md. 186; *Bouldin* v. *Baltimore*, 15 Md. 18.) Those who sign and present the petition may be estopped from afterwards questioning the sufficiency of the petition as regards numbers. (*Burlington* v. *Gilbert*, 31 Iowa, 356; s. c. 7 Am. Rep. 143.) The doing of the work by the Municipal Council or the adoption of it by the Council does not *per se* oblige the proprietors to pay for it. (*Reilly* v. *Philadelphia*, 60 Penn. St. 467, distinguished from *City* v. *Wistar*, 11 Casey 427, and *City* v. *Burgin*, 14 Wright (Pa.) 439.) The Corporation may, notwithstanding, by the terms of the contract, render itself liable to the contractor for the whole amount. (*New Albany* v. *Sweeny*, 13 Ind. 245; *Lucas* v. *San Francisco*, 7 Cal. 463; *Lovell* v. *St. Paul*, 10 Minn. 290.) The Corporation may so contract as to make the contractor look to the assessment for his pay; and although the assessment be void, he would not in such a case have any right to sue the City for the contract price. (*Leavenworth* v. *Rankin*, 2 Kansas, 357; *Swift* v. *Williamsburg*, 24 Barb. 427; *Goodrich* v. *Detroit*, 12 Mich. 279; *Johnson* v. *Common Council*, 16 Ind.

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include a sinking fund, for the repayment of debentures, which such Councils are hereby authorized to issue in such cases respectively, on the security of such rates respectively, to provide funds for such improvements, and for so assessing and levying the same, by an annual rate in the dollar on the real property so benefited, according to the value thereof, exclusive of improvements; (*t*) 29-30 V. c. 51, s. 301, sub. 2; 34 V. c. 30, s. 11.

Annual rate.

(3.) For regulating the time or times and manner in which the assessments to be levied under this section are to be paid, (*u*) and for arranging the terms on which parties

Regulating time and manner of levying assessments, &c.

227; *New Albany* v. *Sweeny*, 13 Ind. 245. See further, *Kearney* v. *Covington*, 1 Met. (Ky.) 339; *Smith* v. *Milwaukee*, 18 Wis. 63; *Finney* v. *Oshkosh*, *Ib.* 309; *Chicago* v. *People*, 48 Ill. 416; *Ruppert* v. *Baltimore*, 23 Md. 184; *Hunt* v. *Utica*, 18 N. Y. 442.) If the Corporation agree with the contractor to collect the assessments, a failure to do so would render the Corporation liable. (*Morgan* v. *Dubuque*, 28 Iowa, 575. See also, *Beard* v. *Brooklyn*, 31 Barb. 142. *Cumming* v. *Mayor of Brooklyn*, 11 Paige 596; *Baker* v. *Utica*, 19 N. Y. 326; *Green* v. *Mayor of New York*, 5 Abb. Pr. Rep. 503; *Reock* v. *Newark*, 33 N. J. Law 129; *Argenti* v. *San Francisco*, 16 Cal. 255.) All depends upon the nature and form of the contract. (*Foote* v. *Milwaukee*, 18 Wis. 270; *Bond* v. *Newark*, 19 N. J. Eq. 376; *Palmer* v. *Stump*, 29 Ind. 329; *McSpedon* v. *New York*, 7 Bosw. 601; *Reilly* v. *Philadelphia*, 60 Penn. St. 467; *Creighton* v. *Toledo*, 18 Ohio, St. 447; *Buffalo* v. *Holloway*, 7 N. Y. 493; *Storrs* v. *Utica*, 17 N. Y. 104. See further, note *c* to sec. 465, and note *i* to sec. 468.)

(*t*) As the rate is to be an annual rate in the dollar, and to be according to the value of the real property benefited, an arbitrary rate of $1 per foot would be clearly bad. (*Ex parte Aldwell and Toronto*, 7 U. C. C. P. 104.) A frontage rate is not bad in itself, but bad when the statute requires the imposition of an annual rate. (*Per* A. Wilson, J., in *Haynes* v. *Copeland*, 18 U. C. C. P. 150.) Churches and other property exempted from general taxation may be exempted from this local rate. (*Ib.*) It is not necessary to impose a separate rate on the property on each street. (*Ib.*)

(*u*) The By-law of a Municipal Corporation, passed in 1865, for the purpose of authorizing the levying of a rate for certain local improvements, in the shape of the pavement of sidewalks, after reciting a previous resolution of the Council accepting a tender for the work, and authorizing the passage of a By-law to levy a certain rate per foot frontage on the owners of real estate on the parts of several streets named, provided that the required sum should be raised by local taxation "upon the proprietors of the several lots of land adjoining said sidewalks immediately benefited thereby; except that part on James street opposite the Market Place, and those parts on Church street opposite the several churches and school houses," that the persons named in the first column of the schedule annexed to the By-law were proprietors of land adjoining the sidewalks and were immediately benefited thereby; that the whole of the said property so benefited was by the assessment

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assessed for local improvements may commute for the payment of their proportionate shares of the cost thereof in principal sums; (*v*) 29-30 V. c. 51, s. 301, sub. 3.

If funds furnished by parties.

(4.) For effecting any such improvement as aforesaid with funds provided by parties desirous of having the same effected. (*w*) 29-30 V. c. 51, s. 301, sub. 4.

Conditions precedent to undertaking any such public works.

**465.** No such local improvement as aforesaid shall be undertaken by the Council, (unless as provided in the next section,) except under a By-law passed in pursuance of the fourth subsection of the preceding section, otherwise than on the petition of two-thirds in number and one-half in value of the owners of the real property to be directly benefited thereby—(*a*) the number of such owners, and the

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rate of 1865 rated at $12,554, enacted that there should be raised from the said proprietors twenty-two and a half cents in the dollar, and that the collector for 1865 should collect the same in the usual way. It then repealed a By-law of 1864, authorizing the levying of the frontage rate. The work in question had been begun, finished and paid for in 1864, with the exception of $659, which were paid before the passage of the By-law of 1865. There was the further fact, that the whole of plaintiff's property at the corners of two streets was assessed, whereas the flagging extended only over a portion of it. Held, that the By-law contained nothing objectionable on its face; but assuming it defective in providing for the debt of the previous year, it was merely providing in 1865 for a debt contracted and provided for by the By-law of 1864, but provided for imperfectly, and that the mere repeal of a defective, doubtful or invalid rate imposed within the jurisdiction of the Council, for another free from all objection, is not a violation of the rule against prospective rates. Held also, that it was no objection to the By-law that certain proprietors were rated for the special rate who were not on the general assessment roll, nor that the assessed value of 1864 was taken instead of that of 1865, as this did not appear on the face of the By-law, and could be raised in an action of replevin. Held also, that the whole of plaintiff's property as assessed was liable, though the flagging extended over a portion only. (*Haynes* v. *Copeland*, 18 U. C. C. P. 150; see further, *The Great Western Railway Co.* v. *West Bromwich Commissioners*, 1 E. & E. 806; *Blackburn* v. *Parkinson*, *Ib.* 71; *Pound* v. *Plumstead Board of Works*, L. R. 7 Q. B. 183; and note *d* to sec. 3 of the Assessment Act, 1869.)

(*v*) The Court in one case intimated that the owner or occupier of property drained by a common sewer might legally be allowed to commute by payment of a fixed sum. (*In re McCutchon and Toronto*, 22 U. C. Q. B. 613.)

(*w*) Where funds are provided by parties desirous of having the local improvement, of course there will be no necessity for levying or assessing the rate contemplated by the previous subsections.

(*a*) See note *s* to sec. 464.

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value of such real property having been first ascertained, and finally determined in the manner and by the means provided by By-law in that behalf; (*b*) and if the contemplated improvement be the construction of a common sewer having a sectional area of more than four feet, one-third of the cost thereof shall also first be provided for by the Council of the City, by By-law for borrowing money, which every such Council is hereby authorized to pass for such purpose, or otherwise. (*c*) 29-30 V. c. 51, s. 302.

Further conditions as to sewers.

**466.** In cases where the Council of any City, Town or Incorporated Village shall decide to contribute at least half of the cost of such local improvement, it shall be lawful for the said Council to assess and levy, in manner hereinbefore provided by the four hundred and sixty-fourth and four hundred and sixty-fifth sections of this Act, from the owners of real property to be directly benefited thereby, the remain-

In certain cases petitions may be dispensed with.

(*b*) Where a By-law provided that the number of owners and the value of the real property was to be ascertained by the City Clerk, and be appended to the petition, a certificate that the total number of persons assessed for property to be directly benefited was twenty-three,—that sixteen names were signed to the petition, that the total value of the assessed property was $520,182, and that the amount represented by the signers of the petition was $413,496, the Court, on an application to quash a By-law for local improvements, refused to go behind this certificate. (*In re Michie and Toronto*, 11 U. C. C. P. 379; see also *In re Montgomery and Raleigh*, 21 U. C. C. P. 381.) "It is not objected that he (the Clerk) acted corruptly and fraudulently, and though, as I gather from the unanswered statements in the relator's affidavits, the City Clerk has fallen into an error,—an error easily accounted for, as his conclusions were drawn from the assessment roll only,—yet I think we cannot on that account annul the whole proceeding. . . . I am not to be understood as determining that he should have confined his inquiry to the assessment roll, when he was required to ascertain and finally determine the matter of number and value; but I think that, having acted as we must assume *bona fide*, the Legislature intended his determination to be final, as the foundation for the By-law authorizing the improvement and imposing the special rate. (*Re Michie and Toronto*, 11 U. C. C. P. 385, *per* Draper, C. J., ; see further, note *s* to sec. 464.)

(*c*) A Municipal Corporation contracted with a paver to do certain work at a fixed price, of which the Corporation was to pay one-third and the owners two-thirds. It was, however, judicially determined that the owners were in law liable to pay only one-third. Held, that the paver had the right to recover two-thirds against the Corporation. (*Tournier* v. *Municipality*, 5 La. An. 298; see further, *Cronan* v. *Municipality*, *Ib.* 537; *Maher* v. *Chicago*, 38 Ill. 266; *Chicago* v. *The People*, 48 Ill. 416; *Reilly* v. *Philadelphia*, 60 Pa. St. 467; *Michel* v. *Police Jury*, 9 La. An. 67; *Reock* v. *Newark*, 3 3 N. J. Law. 129; see also, note *s* to sec. 464.)

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ing portion of such cost without petition therefor, (*d*) unless the majority of such owners, representing at least one-half in value of such property, shall, within one month after the publication of a notice of such proposed assessment in at least two newspapers published in such City, Town or Incorporated Village, (*e*) if there be two newspapers published therein, and if there be not, then in two newspapers published nearest the proposed work, petition the Council against such assessment. 34 V. c. 30, s. 12.

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(*d*) Where a City was authorized by one section of the Act, on the petition of two-thirds of the owners of abutting property, to make certain improvements in a street, and by a subsequent section power was conferred upon the Council to order such improvements by a two-thirds vote of the Council, it was held that, although proceedings relative to the improvements were commenced by petition from the property holders, yet, having been ordered by a two-thirds vote of the Council, they were valid, although two-thirds of the property holders did not unite in the petition, for that the two-thirds vote of the Council made the proceedings valid, notwithstanding any prior defects. (*Indianapolis* v. *Mansur*, 15 Ind. 1860; see further, *Lafayette* v. *Fowler*, 34 Ind. 140.)

(*e*) It has been held that where a Municipal Corporation exercises the power to make local improvements and charge the cost thereof on the lands directly benefited thereby, that the owners of such lands, if accessible by reasonable diligence, are entitled to reasonable notice of the meeting of the Commissioners for assessing the cost, and this although the charter be silent on the subject. (*State* v. *Jersey*, 4 Zabr. N. J. 662. See also, *Cowen* v. *West Troy*, 43 Barb. 48; *Brewtser* v. *Newark*, 3 Stockt Ch. J. 114; *State* v. *Hudson*, 5 Dutch 475; *State* v. *Perth Amboy*, *Ib.* 259; *Myrick* v. *Lacrosse*, 17 Wis. 442; *Rathburn* v. *Acker*, 18 Barb. 393; *Risley* v. *St. Louis*, 34 Mo. 404; *Palmyra* v. *Morton*, 25 Mo. 593; *Washington* v. *Mayor*, 1 Swan. Ten. 177; *Whyte* v. *Mayor*, &c., 2 Swan. Ten. 364; *Ottawa* v. *Railroad Co.*, 25 Ill. 43; *Jenks* v. *Chicago*, 48 Ill. 296; *Himmelman* v. *Oliver*, 34 Cal. 246.) Where the By-law of a Municipal Corporation provided that the Clerk of the Council should cause a notice to be left at the place of abode of each of the parties assessed for such improvement, that the assessment was made and the amount thereof, and that a By-law would be passed in accordance therewith unless appealed from as provided by law, the Court, on the application of a person interested, who swore that he had no notice of the By-law until some time after it was passed, and that he first became aware of the particulars of it and of the proceedings on which it was based in February before the application to quash, refused to quash the By-law. (*In re Michie* v. *Toronto*, 11 U. C. C. P. 379. *Per cur.*) "The sixth objection is sustained in fact, as I understand the statements. But the provision requiring notice of intention to pass the By-law to be given or sent to parties affected by it, is not statutory, nor is the validity of the By-law made dependent on provisions contained only in By-laws. And although the relator states in his affidavit that he had no notice of the By-law 'until some time after it was passed,' and that he first became aware of the particu-

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**467.** Nothing contained in the three next preceding sections of this Act shall be construed to apply to any work of ordinary repair or maintenance; and every common sewer made, enlarged or prolonged, and street, lane, alley, public way or place, and sidewalk therein, once made, opened, widened, prolonged, altered, macadamized, paved or planked, under the said sections of this Act, shall thereafter be kept in a good and sufficient state of repair at the expense of the City generally. (*f*) 29-30 V. c. 51, s. 306.

Certain sections not to apply to certain works.

**468.** The Council of every City, Town and Incorporated Village may pass By-laws (*g*) for raising, upon the petition of at least two-thirds of the freeholders and householders

Lighting, watering and sweeping streets.

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lars of it and of the proceedings on which it was based in February last, yet it is difficult to suppose that he was not aware long before that date that the stone sidewalk was being laid down, or that the work was of that character which was usually paid for by special local rate. This was enough to put any one on enquiry. Then he seems, from his own expression, to have become aware of the By-law some time before he became aware of its precise contents; but the knowledge of the first was notice of the second, and he then might have learned everything necessary to support a much earlier application to quash the By-law." (*Per* Draper, C. J., *Ib.* 385.) Notice to "repave" held not sufficient where the assessment was for paving. (*State* v. *Jersey City*, 3 Dutch, N. J. 536.) Notice of time and place for hearing objections to proposed improvement. (*State* v. *Jersey City*, 1 Dutch, N. J., 309; *State* v. *Jersey City*, 2 Dutch, N. J. 464; *State* v. *Jersey City*, 4 Zab. 662; *State* v. *Newark*, 1 Dutch, 399; *State* v. *Elizabeth*, 2 Vroom. 547.) Requisites of such a notice. (*Tufts* v. *Charlestown*, 98 Mass. 583; *Ottawa* v. *Macey*, 20 Ill. 413; *Simmons* v. *Gardener*, 6 Rh. Is. 255; *Baltimore* v. *Bouldin*, 23 Md. 328.) This section provides for the publication of a notice of the proposed assessment in at least two newspapers published in the City, Town or Incorporated Village, if there be two; if there be not, then in two newspapers published nearest the proposed work. Where the Legislature has made the giving of notice necessary, and provided a mode for giving such notice, that mode should be strictly followed. (*Simmons* v. *Gardner*, 6 Rh. Is. 255; *Scammon* v. *Chicago*, 40 Ill. 146; *Risley* v. *St. Louis*, 34 Mo. 404; *Hildreth* v. *Lowell*, 11 Gray 345; *Williams* v. *Detroit*, 2 Mich. 560; *State* v. *Elizabeth*, 1 Vroom. 365; *Durant* v. *Jersey City*, 1 Dutch 309; *Norwich* v. *Hubbard*, 22 Conn. 587; *State* v. *Jersey City*, 4 Zabr. N. J. 662; *Dubuque* v. *Wooten*, 28 Iowa, 571; *Palmyra* v. *Morton*, 25 Mo. 593.) Failure, after notice, to object to an assessment before a City Council, when it had the power to revise and correct or annul it, and direct a new assessment, was held to be a waiver of notice. (*Ottawa* v. *Railroad Co.* 25 Ill. 43; see also, *State* v. *Jersey City*, 2 Dutch 444.)

(*f*) It is the duty of every Municipal Corporation to keep every public road, street, bridge and highway within the Corporation in repair. (Sec. 409.) The Corporation is responsible for all damages sustained by any person by reason of such default. (*Ib.*)

(*g*) Discretionary. See note *b* to sec. 412.

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resident in any street, square, alley or lane, representing in value one-half of the assessed real property therein, (*i*) such sums as may be necessary for sweeping, watering or lighting the street, square, alley or lane, by means of a special rate on the real property therein, according to the frontage thereof, (*j*) but the Council may charge the general corporate funds with the expenditure incurred in such making or repairing, or in such sweeping, watering or lighting as aforesaid; (*k*)

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(*i*) The power is upon the petition of at least two-thirds of the freeholders and householders resident in *any* street, square, alley or lane, representing in value one-half of the assessed real property therein, according to the frontage thereof, to raise such sums as may be necessary for—

1. Sweeping,
2. Watering or } *the* street, square, alley or lane.
3. Lighting

It is very plain that what the Legislature authorizes is, that the power of the Council to impose a rate for the purposes indicated is to be exercised *only* by *By-law*, and that such By-law should in every case be passed subsequent to and consequent upon the presentation of the required petition praying the particular By-law to be passed, and after the fullest opportunity should be given to every ratepayer to be affected by the By-law to object to its being passed. (*Per* Gwynne, J. in *Morell* v. *Toronto*, 22 U. C. C. P. 323, 326; see further, note *s* to sec. 464.) The petition may be that of *a portion* only of a street, asking the Corporation to sweep, water or light that portion. (*In re Platt and Toronto*, 33 U. C. Q. B. 53; see also, *Scovill* v. *Cleveland*, 1 Ohio, St. 133; *Railroad Company* v. *Connelly*, 10 Ohio, St. 159; *Creighton* v. *Scott*, 14 Ohio, St. 438; *St. Louis* v. *Clemens*, 49 Mo. 552.) But an application to sweep, water or light a *whole* street can only be legally granted when made by two-thirds of the property owners on the whole street. So if the Corporation, upon a petition of the property owners of *part* of a street, sweep, water or light the *whole* (otherwise than in the exercise of their general powers; see notes *k* and *l* below), the By-law would be void. (*Swann* v. *Cumberland*, 8 Gill, Md. 150; *McGonigle* v. *Alleghany*, 44 Pa. St. 118.) The By-law will be open to objection if it do not state the amount to be raised and levied. (*In re Platt and Toronto*, 33 U. C. Q. B. 57.) But where the application to quash the By-law on such an objection was not made till all the work authorized had been done, the only effect of quashing it would have been the passage of another By-law to remedy the defect, the Court, in the exercise of its discretionary power, refused to quash the By-law. (*Ib.*) It is not necessary in such a By-law to name the day when it shall take effect. (*Ib.*)

(*j*) See note *s* to sec. 464.

(*k*) It is in the discretion of the Council either to charge the general corporate funds with the expenditure, or to charge only the freeholders and householders whose land fronts on the street, &c. The latter course cannot be legally adopted unless there be the petition made necessary by the former part of this section. (See preceding note.)

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and the Council may also, by By-law, define certain areas or sections within the Municipality in which the streets should be watered, and may impose a special rate upon the assessed real property therein, according to the frontage thereof, in order to pay any expenses incurred in watering such streets. (*l*) 29-30 V. c. 51, s. 340, sub. 2; 37 V. c. 16, s. 21.

Local rates for special improvements.

**469.** The Council of every County (*m*) shall have power to pass By-laws (*n*) for levying by assessment on all ratable property within any particular part of one or parts of two Townships to be described by metes and bounds in the By-law, in addition to all other rates, a sum sufficient to defray the expenses of making, repairing or improving any road, bridge or other public work lying within one Township or between parts of such two Townships, and by which the inhabitants of such parts will be more especially benefited; (*o*) Provided that the provisions of this subsection shall not be held to apply to any road, bridge or other public work within the limits of any Town or Incorporated Village Municipality. (*q*) 29-30 V. c. 51, s. 344, sub. 6.

Proceedings to obtain a by-law for such improvements.

**470.** No By-law under the last preceding section shall be passed except—(1.) Upon a petition signed by at least two-thirds of the electors who shall be rated for at least one-half of the value of the property within those parts of such Townships which are to be affected by the By-law; (*r*) (2.) Nor unless a printed notice of the petition, with the names of the signers thereto, describing the limits within

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(*l*) This part of the section relates only to the watering of streets. It would seem that no petition is necessary to the exercise of the power here conferred. That power is to define certain areas or sections within the Municipality in which streets should be watered, and to impose a special rate upon the assessed real property therein, according to the frontage thereof, to pay the expenses incurred.

(*m*) Applies only to *Counties*.

(*n*) See note *b* to sec. 412.

(*o*) The power to levy rates is in general on all the ratable property in the particular Township. The exception here is in the case of local improvements, where the inhabitants of a particular part of the Township, or parts of two Townships, will be more especially benefited. The local rate must be levied by By-law, subject to the provisions contained in the next section.

(*q*) Roads, bridges or other public works *within* the limits of any Town or Incorporated Village are vested in the local Corporation. (Sec. 407.) Over such the County Council is not to exercise any jurisdiction whatever.

(*r*) See note *s* to sec. 464.

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which the By-law is to have force, has been given for at least one month, by putting up the same in four different places within such parts of the Township, and at the places for holding the sittings of the Council of each Township, whether it be within such parts or not, and also by inserting the same weekly for at least three consecutive weeks in some newspaper, if any there be, published in the County Town; or if there be no such newspaper, then in the two newspapers published nearest the proposed work. (*s*) 29-30 V. c. 51, s. 344, sub. 7.

DIVISION XIII.—POWERS OF MUNICIPAL COUNCILS AS TO RAILWAYS.

*Aiding by taking stock, loan, guarantee or bonus. Sec. 471, 472.*
*How By-laws in aid submitted. Sec. 473.*
*Provisions of By-laws. Sec. 474.*
*Head of Council to be a Director ex-officio. Sec. 475.*
*May permit railways to pass along highways, &c. Sec. 476.*

By-laws may be made for—

**471.** The Council of every Township, County, City, Town and Incorporated Village, (*a*) may pass By-laws:

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(*s*) See note *e* to sec. 466.

(*a*) Applies to all Municipal Corporations. The powers conferred are in general discretionary, not obligatory. (See note *b* to sec. 412.) These powers are, under certain limitations, to aid Railway Companies. The constitutional right of the Legislature to authorise Municipal bodies to aid trading Corporations, such as railways, and to tax the people for aid, is, in the United States, a subject of grave judicial conflict. Strong ground was taken by Chief Justice Dillon against the power in a very able and exhaustive judgment delivered by him in *Hanson* v. *Vernon*, 27 Iowa, 28; s. c., 1 Am. Rep. 215. Referring to *Dubuque County* v. *Dubuque and Pacific Railway Co.* 4 G. Greene 1, where the majority of the Court held otherwise, he said, "Disaster, the child of extravagance and debt, and dishonour, the unbidden companion of bankruptcy, are the bitter but legitimate consequences of that decision, and 'the end is not yet.' In every other State in which a similar decision was made, similar consequences ensued." He admits the constitutional right of eminent domain, but says, though in some respects kindred, it and the taxing power are essentially different. Similar ground was taken against the constitutionality of such acts in *Whiting* v. *Sheboygan and Fond du Lac Railway Co.* 25 Wis. 167; 3 Am. Rep. 30; *and The People ex rel. The Detroit & Howell Railway Co.* v. *Salem*, 20 Mich. 452, 4 Am. Rep. 400. On the other hand, equally strong ground is taken and equally able judgments have been delivered in favour of the constitutionality of such acts in *Sharpless* v. *Philadelphia*, 21 Penn. St. 147; *Ex parte Selma and Gulf Railroad Co.* 45 Ala. 696; 6 Am. Rep. 722; and *Stewart* v. *Supervisors of Polk County*, 1 Am.

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(1.) For subscribing for any number of shares in the capital stock of, or for lending to or guaranteeing the payment of any sum of money borrowed by an Incorporated Railway Company, (*b*) to which the eighteenth section of the statute fourteenth and fifteenth Victoria, chapter fifty-one

Taking stock in certain railways or guaranteeing debentures.

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Rep. 238. In the last mentioned case, Mr. Justice Miller says, "The question of the constitutional power of the Legislature to authorize Municipal Corporations to aid by local tax in the construction of railroads, within the territory of such Municipal Corporations, has been before the highest judicial tribunal of at least twenty-one of the States, and the Supreme Court of the United States, and in every instance the power has been confirmed until quite recently in the Supreme Courts of Michigan and Wisconsin, and in this Court in *Hanson* v. *Vernon*." He concludes his judgment by saying, "We find that upon principle and reason there is the same authority for the exercise of the sovereign power of taxation in aid of the construction of railroads that there is for the exercise of the right of eminent domain, and that this view is sustained by an overwhelming weight of authority." But on one point the Judges in the United States are all agreed with unusual unanimity, and that is, that Municipal Corporations have *no implied power* to aid Railway Companies. (*Aurora* v. *West*, 22 Ind. 88; *Starin* v. *Genoa*, 23 N. Y. 439; *Gould* v. *Sterling*, *Ib.* 439; *Barnes* v. *Atcheson*, 2 Kansas, 454; *Acheson* v. *Butcher*, 3 Kansas 104; *Bank* v. *Rome*, 18 N. Y. 38; *Bridgeport* v. *Housatonuc Railway Co.* 15 Conn. 475; *Marsh* v. *Fulton*, 10 Wall. 676; *Nichol* v. *Nashville*, 9 Hump. Ten. 252; *St. Louis* v. *Alexander*, 23 Mo. 483; *Jones* v. *Mayor*, &c., 25 Geo. 610; *Duanesburgh* v. *Jenkins*, 40 Barb. 574; *French* v. *Teschemaker*, 24 Cal. 518; *People* v. *Mitchell*, 35 N. Y. 551; *Thompson* v. *Lee County*, 3 Wall. 327; *Railroad Co.* v. *Evansville*, 15 Ind. 395; *Aurora* v. *West*, 9 Ind. 74; *Lafayette* v. *Cox*, 5 Ind. (Port.) 38.) The power, supposing it to be perfectly constitutional, is of that extra Municipal character that no intendment will be made in favour of the exercise of it in a doubtful case. (*Bate* v. *Ottawa*, 23 U. C. C. P. 32.) Where a Municipal Corporation passed a resolution granting $1,000 to an individual in consideration of his having advanced that amount in aid of a railway, the resolution was quashed. (*Ib.*)

(*b*) The aid may be—

1. By *subscription* for any number of shares in the capital stock of the Company.

2. By *lending* money to the Company.

3. By *guaranteeing* the payment of any sum of money borrowed by the Company.

The powers are limited, to be exercised only in favour of such Companies, as the 14 & 15 Vic. cap. 51, or the sections 75 to 78 of Con. Stat. Can. cap. 66, have been made applicable to by any special Act.

The subscription for stock may be conditional (*Higgins* v. *Whitby*, 20 U. C. Q. B. 296); and if the amount subscribed be paid either directly to the Company, or to the contractors of the Company at their request, the liability of the Municipality is thereby extinguished. (*Woodruff* v. *Peterborough*, 22 U. C. Q. B. 274.)



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(the Railway Clauses Consolidation Act), or the sections of the Consolidated Statute of Canada respecting railways, numbered seventy-five to seventy-eight, have been or may be made applicable by any special Act; 29-30 V. c. 51, s. 349, sub. 1.

For guaranteeing the payment of debentures, &c.

(2.) For endorsing or guaranteeing the payment of any debenture to be issued by the Company for the money by them borrowed, and for assessing and levying from time to time upon the whole ratable property of the Municipality a sufficient sum to discharge the debt or engagement so contracted; (*c*) 29-30 V. c. 51, s. 349, sub. 2.

For issuing debentures, &c.

(3.) For issuing, for the like purpose, debentures payable at such times and for such sums respectively not less than twenty dollars, and bearing or not bearing interest, as the Municipal Council may think meet; (*d*) 29-30 V. c. 51, s. 349, sub. 3.

Bonuses.

(4.) For granting bonuses to any Railway Company, in aid of such railway, and for issuing debentures in the same manner as is in the preceding sub-section provided for raising money to meet such bonuses. (*e*) 34 V. c. 30, s. 6.

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It would seem that a By-law authorizing subscription for stock, especially if it authorize the issue of debentures, is the contracting of a debt not payable in the same municipal year, so as to demand the formalities required by sec. 248 of this Act. (*In re Billings and Gloucester*, 10 U. C. Q. B. 273.) The Legislature may, it seems, at any time before the subscription is paid, annul the proceeding, and authorize the Municipal Corporation to withdraw its subscription, and release its right to stock. (*People* v. *Coon*, 25 Cal. 635.) So it would seem that defective subscriptions for stock may be ratified by the Legislature in all cases where the Legislature could originally have conferred the power. (*Keithsburg* v. *Frick*, 34 Ill. 405; *Copes* v. *Charleston*, 10 Rich. S. C. Law 491; *McMillen* v. *Boyley*, 6 Iowa, 304, 394; *Gelpcke* v. *Dubuque*, 1 Wall. 220; *People* v. *Mitchell*, 35 N. Y. 551; *Thompson* v. *Lee County*, 3 Wall. 327; *Bass* v. *Columbus*, 30 Geo. 845; *City* v. *Lamson*, 9 Wall. 477.)

(*c*) A Municipal Council may, under this clause, *endorse* or *guarantee* a debenture issued by the Railway Companies intended, and may assess and levy a sufficient sum to discharge the *debt* or *engagement*. An endorsement under the clause would seem to be deemed "a debt," while a guarantee is termed an "engagement." (See Con. Stat. Can. cap. 66, sec. 75.)

(*d*) No Council is allowed, "unless specially authorized so to do, to give any bond, bill, note, debenture or other undertaking, for the payment of a less amount than one hundred dollars." (Sec. 304.) By this clause a special authority is given for the issue of debentures in aid of Railway Companies, in sums "not less than twenty dollars." (See Con. Stat. Can. cap. 66, sec. 75.)

(*e*) A By-law of a County Council in aid of a railway to the extent of $20,000, by way of bonus, which had not been submitted to the

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(5.) For directing the manner and form of signing or endorsing any debenture so issued, endorsed or guaranteed, and of countersigning the same, and by what officer or person the same shall be so signed, endorsed or countersigned respectively; (*f*) but no Municipal Corporation shall subscribe for stock or incur a debt or liability for the purposes aforesaid, unless the By-law, before the final passing thereof, shall receive the assent of the electors of the Municipality in manner provided by this Act. (*g*) 29-30 V. c. 51, s. 349, sub. 4.

Form of debenture.

Subscriptions, &c., to be confirmed by assent of electors.

**472.** (h) *Any Municipality or any portion of any Municipality which may be interested in securing the construction*

Municipalities may give aid towards construction of railway to pass through or near same.

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ratepayers, was quashed. (*Ex rel Clement* v. *Wentworth*, 22 U. C. C. P. 300.) It would seem that the general intention of the Legislature is that all assistance granted to a Railway Company should be with the assent of the electors before granted, and that the making of direct advances from moneys actually in hand to aid a railway is not contemplated. (*Per* Hagarty, C. J., in *In re Bate and Ottawa*, 23 U. C. C. P. 35.) If assumed that a Municipal Council may grant a bonus to a railway, consisting of unappropriated moneys in hand, the Legislature meant, and have so expressed their meaning, that the bonus must be to the Railway Company, and not to some individual to repay him for advances to, or services rendered the Company. (*Ib. Per* Hagarty, C. J., 36.) A By-law granting $1,000 to an individual in consideration of his having, at the instance of the Corporation, advanced that amount in aid of a Railway Company, was therefore quashed. (*Ib.*)

(*f*) The powers are, to direct—

1. The *manner* and *form* of signing or endorsing any debenture so issued, endorsed or guaranteed, and of countersigning the same;

(2.) By what officer or person the same shall be so signed, endorsed or countersigned respectively.

(*g*) The words commencing "But no Municipal Corporation shall subscribe," &c., though apparently a part of sub. 5, are no more a part of that subsection than of any other of the subsections. Their true character is that of a proviso to limit a qualification upon, or exception from, the whole section. They are not a *part of*, but a qualification *upon* the section. (*Per* Gwynne, J., in *Ex rel Clement* v. *Wentworth*, 22 U. C. C. P. 304; see further, *Attorney-General* v. *Mayor of Leeds*, L. R. 5 Ch. 583.)

(*h*) Sections 472, 473 and 474 of this Act were repealed by sec. 22 of 37 Vic. cap. 16. But it is by the same section declared that "such repeal shall not affect anything legally done under the said sections, or any of them, or any proceedings commenced under the said sections, or any of them, which proceedings may be continued as if the said sections had not been repealed. For this reason the sections are retained in the Manual, but placed in italics; for the same reason the notes are also retained.

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*of a Railway, or through any part of which or near which the railway or works of any Railway Company shall pass or be situated, may aid or assist such Company by loaning or guaranteeing or giving money by way of bonus or other means to the Company, or issuing municipal bonds to or in aid of the Company, and otherwise, in such manner and to such extent as such Municipality shall think expedient;* (i) *Pro-*

Proviso.

(i) The power to aid or assist is conferred upon *any* Municipality, or *any portion* of a Municipality, which may be interested in securing the construction of a railway, or *through* any part of which or *near which* the railway or works of any Railway Company shall *pass* or be *situated*. On an application for a writ of *mandamus* to compel a Municipal Council to pass a By-law in aid of a railway, which had been approved by the electors, the Court discharged the rule on the ground that it did not appear in the papers on which the rule was moved that the proposed line of railway would, if constructed, pass through or near the municipality. (*Peck* v. *Peterboro'*, 34 U. C. Q. B. M. T., 1874.) In a case in Ohio, where the Legislature authorized the County Commissioners of any County *through* or in *which* a railroad might be located, to subscribe for stock, and for the purpose of paying therefor "to borrow the necessary amount of money, for which they shall issue their negotiable bonds," &c., it was held to be a defence to an action on the bonds (though by a *bona fide* holder) that the railroad was never "made or located" "through or in the County." (*Treadwell* v. *Commissioners*, 11 Ohio St. 183; see also, *Commissioners of Knox County* v. *Aspinwall*, 21 How. 539; *Bissell* v. *Jeffersonville*, 24 How. U. S. 287; see also, *State* v. *Van Horne*, 7 Ohio St. 327; *State* v. *Trustees, &c.*, 8 Ohio St. 394.) If the power to issue bonds in aid of railways has not arisen by reason of an absolute compliance with conditions precedent, they are, in the United States, held to be void into whosoever hands they may come. (*Marsh* v. *Fulton County*, 10 Wall. 676; *Clay* v. *County*, 4 Bush. (Ky.) 154.) Besides the Act authorizing town officers to borrow money upon the credit of the town, and to pay it over to a Railroad Corporation to be expended by it "in grading and constructing a railroad," taking in exchange its stock at par, it was held not to be within the power of Municipal officers to make a direct exchange of the bonds of the town, even for an equal nominal amount of stock. (*Starin* v. *Genoa*, 23 N. Y. 439; *Gould* v. *Sterling*, *Ib.* 439.) In the last case, Selden, J., said, "The only authority given (to the town) by the Act is, to borrow upon the bonds of the town. No express power to sell the bonds is given, and no such power can, I think, be implied. To borrow money and give a bond or obligation for it, and to sell a bond or obligation for money, are by no means identical transactions. In the one case, the money and the bond would, of course, be equal in amount. In the other they might or might not be equal." Whether such a defence would, however, be open or not as against a *bona fide* holder was not determined. (See *Woods* v. *Lawrence County*, 1 Black. 386; *Maran* v. *Miami County*, 2 Black. 722; see further, note *m* to sec. 300.) If the aid be granted *only* on certain conditions, and the Company have failed as to the conditions, they cannot compel the Municipal

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*vided always that such aid, loan, bonus or guarantee shall be given under a By-law for the purpose, to be passed in conformity with the provisions of section two hundred and thirty-one of this Act.* (j) *Vide* 34 V. c. 43, s. 19.

Mode of submitting such By-laws.

**473.** (k) *Such By-laws shall be submitted* (kk) *in the manner following, namely:—*

(1.) *In the case of a County Municipality, by the County Council on a petition of a majority of the Reeves and Deputy Reeves, or of two hundred resident freeholders who may be duly qualified voters under the Municipal Act;* (l)

(2.) *In the case of other Municipalities and of sections of such Municipalities, by the Councils of such Municipalities, on the petition of the majority, or of fifty resident freeholders, being duly qualified voters as aforesaid;* (m)

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Corporation to grant the aid. In such a case, if the debentures be in the hands of a trustee, the Corporation will be entitled to receive them back. (*Luther* v. *Wood*, 19 Grant, 348.)

(*j*) That is to say, subject to the approval of the electors. (See note *g* to preceding section.)

(*k*) See note *h* to sec. 472.

(*kk*) *Shall* (not *may*) be submitted. It is made the duty of the Municipal Council to submit the By-law to the vote of the ratepayers when required to do so, as provided in this section. (See note *b* to sec. 412.)

(*l*) There may be either a petition of a majority of the Reeves and Deputy Reeves, *or* two hundred resident freeholders who are qualified voters under the Act. The petition of the one description or the other is necessary before any duty arises on the part of the County Council. It is not easy to obtain a petition of the Reeves and Deputy Reeves of the County, unless the enterprise be one in which the people of the County generally are interested. But a petition from two hundred resident freeholders may be readily obtained in any corner of a populous County, whether the people generally of the County are interested or not. It is not apparently necessary, in the case of a County Municipality, that the petition should have appended to it a certain proportion of the ratepayers from each portion of the County. (See note *n* below.)

(*m*) The remarks as regards the petitions for County By-laws, made in the previous note, apply with increased force to sectional By-laws. The idea is, that the ratepayers of a section of a Municipality shall have the power to tax themselves to aid a railroad in which they, and not the rest of the ratepayers of the Municipality, have an interest. So long as the power is exercised in only a small section of country, the injustice that may be wrought is not so apparent as in the case of a section of a County consisting of several Townships, some of which may be totally opposed to the aid, and yet compelled to grant it. But in such a case it would seem that the Legislature alone can free from the burden. (*West Gwillimbury* v. *Simcoe*, 20 Grant, 211.)

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(3.) *And in the case of Municipalities or portions of Municipalities which form part of a County Municipality, by the Council of such County Municipality, on the petition of fifty resident freeholders who are duly qualified voters as aforesaid.* (n) *Vide* 35 V. c. 60, s. 5.

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(*n*) The theory is, that the ratepayers of the several local Municipalities, through their representatives, tax themselves. But in practice it has been found that what are commonly called "the grouping clauses" enable the people of one Municipality to tax the people of an adjoining Municipality against their will. A petition of fifty freeholders favourable to the aid can easily be procured from the people of the section who are favourable thereto, and the petitioners, if sufficiently cunning in selecting the boundaries of the section, may group in the scheme whole Townships, however opposed to it, and subject them to the burden of a debt which they are unwilling to contract. Such a result is opposed not only to the hitherto well-understood policy of Municipal and other representative institutions, but to the plain policy of the law that no man and no Corporation shall be made a debtor or debtors to others against his or their will. It is not clear whether, under this subsection, there should be petitioners from each Municipality or portion of Municipality proposed to be grouped. If the number of petitioners (fifty) were to be taken as a guide to the meaning of the Legislature, it might be argued that there should be fifty petitioners at least from each local Municipality. In the case of a County Municipality, two hundred resident freeholders are required by the first subsection of this section. In the case of other (meaning local, such as Township, Town or Village, forming part of a County) Municipalities, or of sections of such Municipalities, a petition of fifty resident freeholders is, by the second subsection, required. Then by the subsection annotated, it is provided that "in the case of Municipalities or portions of Municipalities which form a portion of a County Municipality, on the petition of fifty resident freeholders (*quære*, of each Municipality and portion of Municipality forming part of a County Municipality?) who are duly qualified voters as aforesaid. If fifty resident freeholders be required under the second subsection for each local Municipality, and for each section of a local Municipality, it may be argued that the Legislature did not intend fifty resident freeholders to be sufficient in the case of a portion of a County consisting of several local Municipalities and sections of local Municipalities. Besides, it may be argued that some petitioners are required from each local Municipality, so as *prima facie* to indicate the desire of the ratepayers of such Municipality, as a portion of a section, to grant the aid, and that fifty is the least number required in the case of any Municipality. Otherwise it might be that residents of one local Municipality, forming a proposed group, could petition and require the passing of a By-law without a petitioner from any one of the other local Municipalities intended to be grouped, which could scarcely have been intended by the Legislature in its wisdom. There is difficulty in the solution of the question in either aspect, and that difficulty arises from the fact that the Legislature has used either too much or too little language to make plain its intention. In a recent case, under a similar Act, Vice-Chancellor Blake is

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**474.** (o) *Such By-laws shall provide:—*

Provisions of such by-laws.

(1.) *For raising the amount so petitioned for, repayable within twenty years by annual instalments of principal, with interest in the meantime payable yearly or half-yearly, and for the issue of debentures for such instalments and interest,* (oo) *and for delivery to the trustees of the debentures for the amount of such instalments with interest, at the times and on the terms specified in the petition;* (p) *which debentures the Municipal Councils, and the Wardens, Reeves and other officers thereof, are hereby authorized to execute and issue in such case respectively;*

(2.) *For assessing and levying upon all the ratable property lying within the section or sections defined by the petition an annual special rate, as nearly equal as may be, sufficient for the repayment of the debentures and interest as the same become due and payable;* (q) *and in case the debt*

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reported to have said: "The only requirement here imposed as to the locality of the ratepayers is that they are 'within the portion of the County affected.' I cannot add to this a clause that would have the effect of requiring the petition to be signed by a certain proportion of the fifty ratepayers from each portion of the County." (*West Gwillimbury* v. *Simcoe*, 20 Grant, 213.)

(*o*) See note *h* to sec. 472.

(*oo*) The debt may be made payable either in one sum or by instalments—for at the end of the section it is provided, "In case the debt incurred for said aid is not repayable by instalments, then sufficient to provide a sinking fund for the redemption thereof." (See note *p* to sec. 248.) The Municipal Council ought not to add any condition to those imposed by the petition, nor should it omit one which the petitioners choose to impose. (*West Gwillimbury* v. *Simcoe*, 20 Grant, 218.) A petition praying for the passage of a By-law granting aid to a Railway Company, to be charged on a specified section of the County. In the section so specified were two villages, both of which were incorporated, but not named either in the petition or the By-law. Held, no objection to the By-law. (*Ib.*)

(*p*) If the essential terms on which the debentures were granted be not complied with by the Railway Company, the Municipal Corporation may either refuse to hand over the debentures to the trustees, or recall them if so handed over. (See *Luther* v. *Wood*, 19 Grant, 348.) Such a By-law does not create any contract. The Municipal Corporation is not to be considered as contracting with the Railway Company in consideration of the latter building a railway and stations, but as providing for a gift to the Company upon certain conditions. "The debentures being then intended to be delivered by way of gift or bonus, I know of no doctrine of equity which would authorize this Court to treat the conditions as to time in which that gift was to take effect as immaterial." (*Per* Strong, V.C., *Ib.* 353.)

(*q*) See sec. 248, and notes thereto.

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*incurred for said aid is not repayable by instalments, then sufficient to provide a sinking fund for the redemption thereof.* (r) *Vide* 35 V. c. 60, s. 6.

In certain cases, head of council to be *ex-officio* a director.

**475.** In case any Municipal Council subscribes for and holds stock in a Railway Company, under section four hundred and seventy-one, to the amount of twenty thousand dollars or upwards, the head of the Council shall be *ex-officio* one of the directors of the Company, in addition to the number of directors authorized by the special Act, and shall have the same rights, powers and duties as the other directors of the Company. (*s*) 29-30 V. c. 51, s. 351.

By-laws authorizing branch railways.

**476.** The Council of every Township may pass By-laws for authorizing any Railway Company, in case such authority is necessary, to make a branch railway on property of the Corporation, (*t*) or on highways, (*u*) under such conditions as the Council sees fit, (*v*) and subject to the restrictions contained in the Consolidated Railway Act, and any other Acts affecting such Railway, (*w*) and may also pass By-laws to authorize Companies or individuals to construct tram and other railways along any highway on such terms and conditions as the Council shall see fit. (*x*) 29-30 V. c. 51, s. 352; 33 V. c. 26, s. 12.

Also tram and other railways along highways.

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(*r*) See sec. 250, and notes thereto.

(*s*) But no such head of Council shall, directly or indirectly, vote on the election or appointment of any of the private directors of any Railway Company incorporated previous to or during the session held in the sixteenth year of Her Majesty's reign, unless the special Act of Incorporation of the Company expressly provides therefor. (Con. Stat. Can. cap. 66, sec. 79.)

(*t*) Every Company to which the Con. Stat. Can. cap. 66 is applicable, has, under sec. 9, sub. 8 of that Act, power to make branch railways if req ired, provided the line of railway be not extended beyond the termini mentioned in the Act incorporating the Company (sec. 129), and o manage the same, and for that purpose to exercise all the powers, privileges and authorities necessary therefor, in as full and ample a manner as for the railway.

(*u*) See ec. 384, sub. 54, and notes thereto.

(*v*) See note *p* to sec. 474.

(*w*) See Con. Stat. Can. cap. 66, secs. 136 to 150, both inclusive, and sec. 170.

(*x*) See sec. 384, sub. 54, and notes thereto.

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# PART VIII.

## POLICE VILLAGES.

DIVISION I.—FORMATION OF.
DIVISION II.—TRUSTEES AND ELECTION ON.
DIVISION III.—DUTIES OF POLICE TRUSTEES.

### DIVISION I.—FORMATION OF.

*Existing continued.* *Sec. 477.*
*New—how formed.* *Sec. 478.*

**477.** Every existing Police Village (*a*) shall continue to be a Police Village, with the boundaries then established. 29-30 V. c. 51, s. 1. Existing police villages continued.

**478.** On the petition of any of the inhabitants of an Unincorporated Village, (*b*) the Council or Councils of the New police villages.

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(*a*) There is in general no difficulty in defining the boundaries of an Incorporated City, Town or Village, because the statute, proclamation or other authority incorporating such a Municipality usually prescribes the boundaries. (See *Irwin* v. *Bradford*, 22 U. C. C. P. 18.) But in the case of a Town or Village not so incorporated, or not having limits otherwise assigned to it, there must of necessity be uncertainty as to the boundaries. A Police Village may be set apart by a County Council with such limits as are deemed expedient. (Sec. 478.) The declaration in this section is that every existing Police Village shall continue to be a Police Village, "with the boundaries *then* established." When established? The words are the same as used in sec. 1 of 29 and 30 Vic. cap. 51. The word "existing," it is presumed, means existing at the time of the passing of the Act (24th March, 1873). The use of the word "existing," followed by the words "shall continue," would appear to indicate that construction. (See note *a* to sec. 1.) This is the only point of time to which the word "then" can be taken to refer. So that the section may be read: "Every Police Village existing at the time of the passing of this Act shall continue to be a Police Village, with the boundaries established at the time of the passing of the Act." Now, the boundaries of a Village or Hamlet fluctuate from day to day with the growth of houses, but the effect of this section may be to restrict the boundaries, notwithstanding the growth. (See *The Queen* v. *Cottle*, 16 Q. B. 412; *Milton-next-Sittingborne Commissioners* v. *Faversham Highway Board*, 10 B. & S. 548, note; see further, note *c* to sec. 478.)

(*b*) The words "Unincorporated Village" as here used may be looked on as the word "Town" or "Village" used in several English Acts of Parliament to indicate a collection of houses. It is a matter of some difficulty to give a definition of "Town" or "Village," when not incorporated, so as to cover all cases. In Co. Litt. it is said, that "a place cannot be a Town in law unless it hath, or in times past hath had, a church, and celebration of Divine service, sacraments and burials." (115 b.) If the words "Blacksmith's shop, tavern and store" were substituted for the words "a

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County or Counties within which the Village is situate

church," &c., the definition of Coke would not be far short of a hamlet or little village as commonly understood in this country. In *The Queen* v. *Fisher*, 8 C. & P. 612, Paterson, J., said, "It is very difficult to define what is a Town in ordinary meaning. It varies from day to day by the erection of new houses." In *Elliott* v. *South Devon Railway Co.* 2 Ex. 729, Parke, B., said, "It would appear that the word Town is not to be understood in its strict legal interpretation as a Township having a church or a constable, but a place containing a number of houses congregated together—an inhabited spot where the occupation is continuous." Alderson, B. (in the same case), said, "What the walls of towns were in ancient times, that is a boundary, continuous buildings are now. By continuous buildings I do not mean buildings which touch each other, but buildings so reasonably near that the inhabitants may be considered as dwelling together. Within the ambit surrounded by such houses is town, and when the railway passes through that ambit it passes through town." (*Ib.* 730.) In the same case, Parke, B., also said, "Probably a garden attached to a house and occupied along with it should be reckoned as part of the house, in considering whether the houses are continuous." (*Ib.* 731.) In *The Queen* v. *Cottle*, 16 Q. B. 412, 416, Russell Gurney charged the jury that a town is generally "a congregation of houses," and that the jury were to say whether the spot in question was surrounded by houses so reasonably near that "the inhabitants might be fairly said to dwell together." Referring to this charge, Lord Campbell (in the same case) said that the learned Recorder had with much felicity comprised, in a few words, all that was material in the language of the Barons of the Exchequer, as to the definition of a town, in *Elliott* v. *South Devon Railway Co.* (*Ib.* 420.) His definition was also approved of in *Milton-next-Sittingborne Commissioners* v. *Faversham*, 10 B. & S. 548; and *London and South Western Railway Co.*, L. R. 4 H. L. 610. In the last mentioned case it was held that lands near Teddington, in Middlesex, situated close to the railway station, but not continuously built upon, were held not to be lands within the town. "That definition amounts to this: that where there is such an amount of continuous occupancy of the ground by houses that persons may be said to be living as it were in the same town or place, continuously there—for the purposes of the Railway Acts, and according to the popular sense of the word, and not the legal sense of the word, which would not give at all a sensible definition, the place may be said to be a town. (*Per* Lord Hatherley, *Ib.* 615.) In another case, Vice-Chancellor Stuart said: "Four or five surveyors and the solicitor of the Company appear to have sworn that they consider Teddington a town; but none of them state anything in support of that opinion except that there are in Teddington a number of shops, such as milliners, grocers, bakers, butchers and the like; and from such reasoning they arrive at the conclusion that Teddington is a town. The fallacy of this conclusion, however, is made quite apparent from the maps and plans which have been referred to in the case; and from which no man of any ordinary sense and discernment can fail to see that Teddington is anything more than what *is usually and properly called a village.*" (*Blackmore* v. *London and South Western Railway Co.*, 19 L. T. N. S. 5.)

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may, by By-law, erect the same into a Police Village, and assign thereto such limits as may seem expedient. (*c*) 29-30 V. c. 51, s. 9.

DIVISION II.—TRUSTEES, AND ELECTION THEREOF.

*Existing Trustees continued. Sec. 479.*
*Trustees three in number. Sec. 480.*
*Qualification required for. Sec. 481, 482.*
*Electors, who are. Sec. 483.*
*Election, where to be held. Sec. 484, 485.*
*Returning Officer, how appointed. Sec. 485.*
*No Election in a Tavern. Sec. 486.*
*Nomination, how conducted. Sec. 487, 488.*
*Election, how conducted. Sec. 489-495.*
*Tenure of office. Sec. 496.*
*Poll books to be returned. Sec. 497.*
*Proceedings not specially provided for. Sec. 498.*
*Powers of Returning Officer. Sec. 499.*
*Vacancies, how filled. Sec. 500.*
*Inspecting Trustee, how appointed. Sec. 501.*

**479.** The Trustees of every Police Village existing when this Act takes effect, (*d*) shall be deemed the Trustees respectively of every such Village as continued under this Act. (*e*) 29-30 V. c. 51, s. 2. Present trustees continued.

**480.** The Trustees of every Police Village shall be three in number. (*f*) 29-30 V. c. 51, s. 68. Number of trustees.

**481.** The persons qualified to be elected Police Trustees are such persons as reside within the Police Village or Qualification of trustees.

(*c*) The power is by By-law to erect the same into a Police Village, *and* assign thereto "such limits as may seem expedient." The power is not from "time to time" to assign limits, or to alter or extend the limits once assigned. In this respect possibly the power is defective. It is a legislative power. (See note *l* to sec. 8; and note *g* to sub. 27 of sec. 384.) The Council should, in the same By-law, name the place in the Village for holding the first election, and the returning officer thereof. (Sec. 484.)

(*d*) While the members of the executive and legislative body of an Incorporated Municipality are called Councillors (see note *k* to sec. 7), the members of such a body in the case of a Police Village are called Trustees. The general powers, however, of each body are much alike. (See sec. 502, *et seq.*)

(*e*) See note *a* to sec. 477.

(*f*) It is presumed that two (the majority) would be a quorum. See note *g* to sec. 120; see also sec. 485.

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within two miles thereof, (*g*) as are eligible to be elected Township Councillors, and as are qualified in respect of property for which they are rated in such Police Village to the amount required so to qualify them. (*h*) 29-30 V. c. 51, s. 70.

Deficiency in number of qualified persons.

**482.** If there are not six persons qualified under the preceding section, any person entitled to vote at the election may be elected. (*i*) 29-30 V. c. 51, s. 72.

Qualification of electors.

**483.** Any Township elector, rated on the last assessment roll for such property in a Police Village as entitles him to vote in respect thereof at the Municipal election for the Township, shall be entitled to vote at the election for Police Trustees. (*k*) 31 V. c. 30, ss. 9 & 10.

Place for holding first election, &c.

**484.** The Council by which a Police Village is established shall, by the By-law establishing the same, (*l*) name the place in the Village for holding the first election of Police Trustees, and the Returning Officer therefor. (*m*) 29-30 V. c. 51, ss. 86 & 96.

Place for holding subsequent elections, &c.

**485.** In a Police Village, after the first election, the Trustees thereof, or any two of them, (*n*) shall, from time to time, (*o*) by writing under their hands, appoint the Returning Officer, and the place or places within such Village for holding nominations and elections. (*p*) 29-30 V. c. 51, s. 96, sub. 2.

No elections to be in taverns.

**486.** No election of Police Trustees shall be held in a tavern or in a house of public entertainment licensed to sell spirituous liquors. (*q*) 29-30 V. c. 51, s. 82.

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(*g*) In the absence of express provision, persons resident without the limits of the Village would not be qualified. (*The Queen ex rel. Blasdell* v. *Rochester*, 7 U. C. L. J. 101; *The Queen ex rel. Fleming* v. *Smith*, *Ib.* 66.)

(*h*) See sec. 71, and notes thereto.

(*i*) See sec. 72, and notes thereto.

(*k*) See sec. 77, and notes thereto.

(*l*) See sec. 478.

(*m*) See sec. 87, and notes thereto.

(*n*) See note *g* to sec. 120.

(*o*) See note *c* to sec. 478.

(*p*) The County Council must name the place for holding the first election, and the Returning Officer thereof. (Sec. 484.) Both must, as to subsequent elections, be appointed under this section by the Trustees or any two of them.

(*q*) See sec. 93, and notes thereto.

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Nomination meeting.

**487.** A meeting of the electors shall take place for the nomination of candidates (*r*) for the offices of Police Trustees, in each Police Village, at noon on the last Monday in December, annually, at such place therein as shall from time to time be fixed by the Trustees. (*s*) *Vide* 29-30 V. c. 51, s. 100.

Who to preside.

**488.** The Returning Officer (or, in his absence, a Chairman to be chosen) shall preside at such meeting, (*t*) of which the Police Trustees shall give at least six days' notice. (*u*) *Vide* 29-30 V. c. 51, s. 100, sub. 1.

If no more candidates than officers.

**489.** If only three candidates shall be proposed and seconded, the Returning Officer or Chairman shall, after the lapse of one hour, declare such candidates duly elected. (*v*) 29-30 V. c. 51, s. 100, sub. 2.

If more, and poll demanded.

Election.

**490.** If more than the necessary number of candidates are proposed, the Returning Officer or Chairman shall adjourn the proceedings until the first Monday in January, when a poll or polls shall be opened for the election, at nine of the clock in the morning, and shall continue open until five of the clock in the afternoon, and no longer. (*w*) *Vide* 29-30 V. c. 51, s. 100, sub. 3; 31 V. c. 30, s. 13; 33 V. c. 26, s. 3.

Notice of persons proposed, to be posted.

**491.** The Returning Officer or Chairman of the meeting shall, on the day following that of the nomination, post up in the office of the Clerk of the Township, if it is situated in such Police Village, and if not, then in some other public place in such Police Village, the names of the persons nominated at such meeting, (*x*) and shall, if a poll is necessary, demand in writing from the Clerk of the Township, or Clerks of the Townships, a list of the names of the male

(*r*) See note *c* to sec. 102.

(*s*) It is presumed that the Trustees will act by resolution. Not having any corporate seal, there can be no sealed By-law.

(*t*) See note *c* to sec. 103.

(*u*) See note *g* to sec. 105.

(*v*) See note *k* to sec. 106.

(*w*) See note *l* to sec. 106.

(*x*) The omission of the Returning Officer or Chairman to do as here directed would be an irregularity, and if it was such as prejudiced a fair election would void the election. (*The Queen ex rel. Walker* v. *Mitchell*, 4 Prac. R. 218.) See notes *n* and *o* to sec. 108.

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List of voters to be obtained.

freeholders and householders, such as is required to be furnished under the next section. (*y*) *Vide* 29-30 V. c. 51, s. 100, sub 4.

Clerk of township to furnish alphabetical list of voters.

**492.** The Clerk of the Township, or Clerks of the Townships, in which any Police Village is situated, shall, at latest, on the day previous to the day for opening the poll, deliver to the Returning Officer of such Police Village a list of the names, arranged alphabetically, of all male freeholders and householders rated upon the then last revised assessment roll for real property lying in the Police Village, or the portion thereof in the Municipality of such Clerk, to the amount required to qualify them to vote at such election, and shall attest the said list by his solemn declaration in writing under his hand. (*a*) *Vide* 29-30 V. c. 51, s. 100, sub. 5.

List to be attested by declaration.

Poll-books.

**493.** The Returning Officer shall, previous to the opening of the poll, procure a poll-book, and he shall enter in such book, in separate columns, the names of the candidates proposed and seconded at the nomination, and shall, opposite to such columns, write the names of the electors offering to vote at the election, and shall, in each column in which is entered the name of a candidate voted for by a voter, set the figure "1" opposite the voter's name. (*b*) *Vide* 29-30 V. c. 51, s. 100, sub. 6.

How kept.

Summing up votes.

**494.** The Returning Officer shall add up the votes set down for each candidate on the poll-book, and ascertain the aggregate number of votes, and shall, on the day following the election, put up in the same place as the nominations were posted the state of the poll, with the number of votes received by each candidate, and a certificate annexed to the said statement, under his hand and seal, showing the successful candidates. (*c*) *Vide* 29-30 V. c. 51, s. 100, subs. 7 & 8; 31 V. c. 30, s. 14.

Declaring state of poll and candidates elected.

Casting vote in case of ties.

**495.** In case a casting vote is required to determine an election, the Returning Officer, whether otherwise qualified or not, shall give a casting vote for one or more of such candidates, so as to decide the election, and except in such

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(*y*) See sec. 492.

(*a*) See sec. 109, and notes thereto.

(*b*) See sec. 110, and notes thereto.

(*c*) See sec. 113, and notes thereto.

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case the Clerk shall not vote at any such election. (*d*) *Vide* 29-30 V. c. 51, s. 100, sub. 9.

Term of office.

**496.** The persons elected shall hold office until their successors are elected or appointed and sworn into office and hold their first meeting. (*e*) 33 V. c. 26, s. 3.

Returning officer to return poll-book to clerk of township, verified under oath.

**497.** Every Returning Officer shall, on the day after the close of the poll, return the poll-book to the Clerk of the Township in which the Village is situated, or in case the Village lies in several Townships, then to the Clerk of the County, verified under oath before such Clerk, or before any Justice of the Peace for the County or union of Counties in which the Village may lie, as to the due and correct taking of the votes. (*f*) *Vide* 29-30 V. c. 51, s. 100, sub. 7; 31 V. c. 30, s. 14.

Except where otherwise provided, same proceedings, &c., to be had as at elections, &c., of councillors, &c.

**498.** The various sections of this Act relating to the proceedings at the nomination and election of Township Councillors, (*g*) including those relating to the questions to be put and oaths to be administered to electors, (*h*) and as to the appointment of a Chairman or Returning Officer, in case the person appointed be absent, (*i*) and also the provisions respecting controverted elections (*k*) and for the prevention of corrupt practices, (*l*) shall apply and be acted on, unless where a different provision is herein made, in the election of Police Trustees. (*m*) *New.*

Powers of returning officers.

**499.** The Returning Officer shall have the like powers for the preservation of the peace as are heretofore given to Returning Officers at Municipal elections. (*n*) *New.*

Filling vacancies.

**500.** In the case of any vacancy in the office of a Police Trustee, by death or otherwise, the remaining Trustee or Trustees shall, by writing to be filed with such Clerk as

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(*d*) See sec. 114, and note thereto.

(*e*) See sec. 129, and note thereto.

(*f*) See note *t* to sec. 112.

(*g*) See sec. 102 *et seq.*

(*h*) See secs. 99, 100.

(*i*) See sec. 103.

(*k*) See sec. 131 *et seq.*

(*l*) See sec. 153 *et seq.*

(*m*) This is in accordance with the general rule that a particular provision, subsequent to a general provision on the same subject, shall control the latter. (See note *c* to sec. 1.)

(*n*) See sec. 97, and notes thereto.

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aforesaid, appoint a Trustee or Trustees to supply the vacancy. (*o*) 29-30 V. c. 51, s. 309.

Appointment of inspecting trustees.

**501.** The Trustees of every Police Village, or any two of such Trustees, shall, by a writing under their hands to be filed with the Clerk of the Township, or in case the Village lies in several Townships with the Clerk of the County, appoint one of their number to be Inspecting Trustee. (*p*) 29-30 V. c. 51, s. 308.

DIVISION III.—DUTIES OF POLICE TRUSTEES.

*Oaths of Office and Qualification. Sec. 502.*
*First Meeting of. Sec. 503.*
*Expenses of, how provided for. Sec. 504-507.*
*Health Officers, Trustees to be. Sec. 508.*
*Regulations to be enforced by. Sec. 509.*
*Penalties for breach, how recovered. Sec. 510.*
*Neglect of duty by Trustees, how punishable. Sec. 511.*
*Limitation of suits for penalties. Sec. 512.*

Oaths of office and qualification.

**502.** Every Police Trustee shall take oaths of office and qualification in the same manner and within the time prescribed for Township Councillors, under like penalties in case of default. (*q*) 29-30 V. c. 51, s. 178.

When first meeting to be held.

**503.** The Trustees of every Police Village shall hold their first meeting at noon on the third Monday of the same January in which they are elected, or on some day thereafter at noon. (*r*) 29-30 V. c. 51, s. 133.

Expenditure, how provided for.

**504.** The Trustees, at any time previous to the first day of June, may require the Council of the Township or Townships in which the Police Village is situated to cause to be levied along with the other rates, upon the property liable to assessment in such Village, such sums as they may estimate to be required to cover the expenditures for that year, in respect of matters coming within their duties, and to cover any balance for expenditures incurred during the year then

(*o*) This is contrary to the ordinary rule. In the event of a vacancy in a Council, the Council orders a new election. See sec. 123, and notes thereto. Here the new Trustee is to be appointed, not elected. See sec. 129, and notes thereto.

(*p*) The duties of the Inspecting Trustee are more especially to attend to the duties of the office, and enforce the regulations of the Police Village. (See sec. 506; sec. 509, sub. 15; sec. 510.)

(*q*) See sec. 218, and notes thereto.

(*r*) See sec. 167, and notes thereto.

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last past, (*s*) such sum not to exceed one cent in the dollar on the assessed value of such property. (*t*) *New.*

Where village in two or more townships.

**505.** In case the Village is situated in two or more Townships, the Trustees shall require a proportionate amount from each, according to the value of the property of the Village in each Township, as shown by the last equalized assessment rolls. (*u*) *New.*

Payment of orders given by trustees, &c.

**506.** The Township Treasurer shall from time to time, if he has moneys of the Municipality in his hands not otherwise appropriated, pay any order given in favour of any person by the Inspecting Trustee, or by any two of the Trustees, (*v*) to the extent of the amount required to be levied as aforesaid, although the same may not have been then collected. *New.*

When orders may be given.

**507.** No Trustee shall give any such order in favour of any person except for work previously actually performed, or in payment of some other executed contract. (*w*) *New.*

Trustees to be health officers.

**508.** The Trustees of every Police Village shall be Health Officers within the Police Village, under the Consolidated Statute for Upper Canada respecting public health, and under any other Act that may be passed for the like purpose. (*x*) 29-30 V. c. 51, s. 313.

Following regulations to be enforced.

**509.** The Trustees of every Police Village shall execute and enforce therein the regulations following. (*a*) 29-30 V. c. 51, s. 314.

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(*s*) The Police Village, for purposes of taxation, is a portion of the Township or Townships in which situate. Hence, when the Police Trustees require moneys to enable them properly to discharge their official duties, they can only obtain it by application to the Township Council or Councils. (See secs. 505, 506.) In this respect they are in the same situation as the Board of Police in Cities. (See note *d* to sec. 343.)

(*t*) See note *i* to sec. 258.)

(*u*) See note *s* to sec. 504.

(*v*) This is for an advance on the levy. It is the duty of the Township Treasurer, if he have unappropriated Township moneys in hand, to make the advance. The advance is to be made, not to the Police Trustees, but to any person having an order signed by the Inspecting Trustee or any two of the Trustees. The order cannot be properly given except for work actually done, or in payment of some other executed contract.

(*w*) See *Chatham* v. *Houston*, 27 U. C. Q. B. 550.

(*x*) See sec. 382, and notes thereto.

(*a*) The Regulations are made by the statute. The duty to enforce them is obligatory. (See sec. 511.)



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*Prevention of Fire.*

For providing ladders, &c.

(1.) Every proprietor of a house more than one story high, shall place and keep a ladder on the roof of such house, near to or against the principal chimney thereof, and another ladder reaching from the ground to the roof of such house, (*b*)

Penalty.

under a penalty of one dollar for every omission, and a further penalty of two dollars for every week such omission continues;

Fire buckets.

(2.) Every householder shall provide himself with two buckets fit for carrying water, in case of accident by fire, (*c*)

Penalty.

under a penalty of one dollar for each bucket deficient;

As to furnaces, &c.

(3.) No person shall build any oven or furnace unless it adjoins and is properly connected with a chimney of stone or brick at least three feet higher than the house or building

Penalty.

in which the oven or furnace is built, (*d*) under a penalty not exceeding two dollars for non-compliance;

Stove-pipes, &c.

(4.) No person shall pass a stove-pipe through a wooden or lathed partition or floor, unless there is a space of four inches between the pipe and the woodwork nearest thereto; and the pipe of every stove shall be inserted into a chimney; and there shall be at least ten inches in the clear between

Penalty.

any stove and any lathed partition or wood-work, (*e*) under a penalty of two dollars;

Lights in stables, &c.

(5.) No person shall enter a mill, barn, outhouse or stable, with a lighted candle or lamp, unless well enclosed in a lantern, nor with a lighted pipe or cigar, nor with fire, not

Penalty.

properly secured, (*f*) under a penalty of one dollar;

Chimneys.

(6.) No person shall light or have a fire in a wooden house or outhouse, unless such fire is in a brick or stone chimney, or in a stove of iron or other metal, properly

Penalty.

secured, (*g*) under a penalty of one dollar;

Securing fire carried through streets, &c.

(7.) No person shall carry fire or cause fire to be carried into or through any street, lane, yard, garden or other place, without having such fire confined in some copper, iron or

Penalty.

(*b*) See sub. 35 of sec. 384, and note thereto.

(*c*) See sub. 37 of sec. 384.

(*d*) See sub. 31 of sec. 384.

(*e*) See sub. 31 of sec. 384.

(*f*) See sub. 29 of sec. 384.

(*g*) See sub. 31 of sec. 384.

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tin vessel, (*h*) under a penalty of one dollar for the first offence, and of two dollars for every subsequent offence;

Fire in streets. Penalty.

(8) No person shall light a fire in a street, lane or public place, (*i*) under a penalty of one dollar;

Hay, straw, &c. Penalty.

(9.) No person shall place hay, straw or fodder, or cause the same to be placed in a dwelling-house, (*j*) under a penalty of one dollar for the first offence, and of five dollars for every week the hay, straw or fodder is suffered to remain there;

Ashes, &c.

(10.) No person, except a manufacturer of pot or pearl ashes, shall keep or deposit ashes or cinders in any wooden vessel, box or thing not lined or doubled with sheet iron, tin or copper, so as to prevent danger of fire from such ashes or cinders, (*k*) under a penalty of one dollar;

Penalty.

Lime. Penalty.

(11.) No person shall place or deposit any quick or unslaked lime in contact with any wood of a house, outhouse or other building, under a penalty of one dollar, and a further penalty of two dollars a day until the lime has been removed or secured to the satisfaction of the Inspecting Trustee, (*l*) so as to prevent any danger of fire;

Charcoal furnaces. Penalty.

(12.) No person shall erect a furnace for making charcoal of wood, (*m*) under a penalty of five dollars;

*Gunpowder.*

Gunpowder —how to be kept. Penalty.

(13.) No person shall keep or have gunpowder for sale, except in boxes of copper, tin or lead, (*n*) under a penalty of five dollars for the first offence, and ten dollars for every subsequent offence; (*o*)

Not to be sold at night. Penalty.

(14.) No person shall sell gunpowder, or permit gunpowder to be sold in his house, storehouse or shop, out-

(*h*) See sub. 31 of sec. 384.

(*i*) *Public place.* See note *z* to sub. 30 of sec. 379.

(*j*) See sub. 30 of sec. 384.

(*k*) See sub. 33 of sec. 384.

(*l*) The continuance of the offence is here, as it were, made a new though not strictly a subsequent offence. The person offending is subject to a penalty of $2 a day after the first until the removal of the lime. (See *Pilcher* v. *Stafford*, 4 B. & S. 775.)

(*m*) See sub. 30 of sec. 384.

(*n*) See sub. 26 of sec. 384.

(*o*) There is a difference between a continuing offence and a subsequent offence. (See note *l* above.)

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house or other building at night, (*p*) under a penalty of ten dollars for the first offence, and of twenty dollars for every subsequent offence;

*Nuisances.*

Certain nuisances prohibited.

(15.) No person shall throw, or cause to be thrown, any filth or rubbish into a street, lane or public place, (*q*) under a penalty of one dollar, and a further penalty of two dollars for every week he neglects or refuses to remove the same after being notified to do so by the Inspecting Trustee, (*r*) or some other person authorized by him. 29-30 V. c. 51, s. 314, subs. 1-15.

Who to sue for penalties.

And before whom.

**510.** The Inspecting Trustee, or in his absence, or when he is the party complained of, one of the other Trustees, shall sue for all penalties incurred under the Regulations of Police herein established, (*s*) before a Justice of the Peace having jurisdiction in the Village and residing therein or within five miles thereof; or if there be none such, then before any Justice of the Peace having jurisdiction in the Village; and the Justice shall hear and determine such complaint in a summary manner, and may convict the offender, upon the oath or affirmation of a credible witness, (*t*) and cause the penalty, with or without costs as he may see fitting, to be levied by distress and sale of the goods of the offender, to be paid over to the path-master or path-masters of the division or divisions to which the Village belongs, or to such of the said path-masters as the Trustees may direct; (*u*) and such path-master or path-masters shall apply the penalty to the repair and improvement of the streets and lanes of the Village, under the direction of the Trustees. (*v*) 29-30 V. c. 51, s. 312.

Conviction and levy of penalty.

Penalty for breach of duty by trustees.

**511.** Any Police Trustee who wilfully neglects or omits to prosecute an offender at the request of any resident householder of the Village offering to adduce proof of an offence against the Regulations of Police herein established, or who

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(*p*) See sub. 26 of sec. 384.

(*q*) See note *x* to sub. 42 of sec. 384.

(*r*) See note *l* above.

(*s*) See sec. 509.

(*t*) *Credible witness.* See note *e* to sec. 317.

(*u*) See Con. Stat. Can. cap. 103 (The Summary Convictions Act).

(*v*) The path-master, or some path-master if more than one, is to receive the penalty. When he receives it, it is his duty to apply it to the repair and improvement of the streets, &c. See note *s* to sec. 323, as to the form of conviction.

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wilfully neglects or omits to fulfil any other duty imposed on him by this Act, (*w*) shall incur a penalty of five dollars. 29-30 V. c. 51, s. 310.

**512.** The penalties prescribed by the preceding section, or by that for the establishment of Regulations of Police, shall be sued for within ten days after the offence has been committed or has ceased, and not subsequently. (*x*) 29-30 V. c. 51, s. 311. When prosecutions to be commenced.

*Confirming and Saving Clauses.*

**513.** Nothing herein contained shall be taken or construed to affect or repeal the four hundred and twenty-third section of an Act passed in the Session of the Parliament of the late Province of Canada, held in the twenty-ninth and thirtieth years of the reign of her present Majesty, chaptered fifty-one, which enacts, that "so much of the schedules in either of the Municipal Corporation Acts of 1849 and 1850 as define the limits or boundaries of any Cities or Towns, being Schedule B of the Act of 1849, numbers two, three, four, six, seven, eight, nine, ten and eleven, and Schedule C of the same Act, numbers one, two and three, and Schedule B of the Act of 1850; numbers one, five, twelve, thirteen, fourteen and fifteen; and also so much of Schedule D of the said Acts of 1849 and 1850 as relates to Amherstburg, and also so much of the two hundred and third section of the said Act of 1849, and so much of any other sections of either of the said Acts relating to any of the Schedules thereof as have been acted upon, or as are in force and remain to be acted upon at the time this Act takes effect, and all proclamations and special statutes by or under which Cities and other Municipalities have been erected, so far as respects the continuing the same and the boundaries thereof, (*a*) shall continue in force." 29-30 V. c. 51, s. 423. Exceptions from repeal. 29-30 V. c. 51, s. 423.

**514.** Nothing herein contained shall affect the Acts of this Province passed respectively in the thirty-third and thirty- 33 V. (Ont.) c. 24 (*Parry Sound*). 33 V. (Ont.) c. 25 (*Algoma*). 35 V. (Ont.) c. 37 (*Parry Sound, Muskoka, Nipissing and Thunder Bay*.

(*w*) The duty to enforce the Regulations of a Police Village is obligatory, (see sec. 509; see further, note *c* to sec. 412,) and is here made penal. As to what is a *wilful* neglect or omission, see sec. 177 of the Assessment Act, and notes thereto.

(*x*) As to computation of time, see note *a* to sec. 128.

(*a*) All these were especially preserved and continued by sec. 423 of the Act 29 & 30 Vic. cap. 51. That section is here quoted at length. Its existence is essential to the preservation of the territorial and Municipal organization of many Municipalities, and its meaning so obvious as not to demand any further notice.

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fifth years of the reign of her present Majesty for establishing Municipal Institutions in the Districts of Algoma, Parry Sound, Muskoka, Nipissing and Thunder Bay, but the same shall be construed as if the provisions of the Acts herein referred to remained unrepealed, (*b*) and as if this Act had not been passed. *New.*

Inconsistent enactments repealed.

Exception.

**515.** The Acts and parts of Acts inconsistent with the provisions of this Act, relating to the Municipal Institutions of Ontario, excepting special Acts which have been enacted to confer specific powers on certain Municipalities, are hereby repealed; (*c*) but the repeal thereof shall not revive any Act

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(*b*) See note *a* to preceding section.

(*c*) When the provisions of a later statute are opposed to those of an earlier, the earlier statute is considered as repealed. (1 Rep. 25 *b.*) The intention to repeal should, however, be reasonably clear. (*Phipson* v. *Harvett*, 1 C. M. & R. 473; *The Queen* v. *St. Edmunds, Salisbury*, 2 Q. B. 84.) All depends on the intention of the Legislature. In *Williams* v. *Pritchard*, 4 T. R. 3, Lord Kenyon said, "It cannot be contended that a subsequent Act of Parliament will not control the provisions of a prior statute if it were intended to have that operation, but there are several cases in the books to show that where the intention of the Legislature was apparent, that the subsequent Act should not have such an operation, there, even though the words of such statute, taken strictly and grammatically, would repeal the former Act, the courts of law, judging for the benefit of the subject, have held that they ought not to receive such a construction." This was recognized in *The King* v. *Poor Law Commissioners*, 6 A. & E. 8; see also, *The King* v. *Poor Law Commissioners, Ib.* 48. Implied repeals are not favoured. (*Trustees Birkenhead Docks* v. *Laird*, 4 De G. McN. & G. 732; *Purnell* v. *Wolverhampton New Water Works Co.*, 10 C. B. N. S. 591; *Bramston* v. *Mayor of Colchester*, 6 E. & B. 246; *Parry* v. *Croydon Commercial Gas Co.* 11 C. B. N. S. 579; *Great Central Gas Co.* v. *Clarke, Ib.* 814, 835, 841; *Daw* v. *Metropolitan Board of Works*, 12 C. B. N. S. 161; and Dwarris on Statutes, 2 Ed. 533.) Affirmative words in a subsequent statute do not repeal the provisions of a former statute, unless there be some obvious inconsistency between the two enactments. (*Dakins* v. *Seaman*, 9 M. &. W. 777; *Michell* v. *Brown*, 1 E. & E. 267, 274; *Middleton* v. *Crofts*, 2 Atk. 674; *McDougall* v. *Pateson*, 11 C. B. 767; *Stuart* v. *Jones*, 1 E. & B. 22; *Ex parte Warrington*, 3 De G. McN. & G. 159.) But if they be inconsistent with each other, the earlier one is to be taken as repealed. (*O'Flaherty* v. *McDowell*, 6 H. L. C. 142.) So if two Acts come into force on the same day, and are repugnant, the one which last receives the Royal Assent must be taken as virtually repealing the former. (*The King* v. *The Justices of Middlesex*, 2 B. & Ad. 818.) Where two statutes give authority to two public bodies to exercise powers which cannot co-exist, the earlier is repealed by the later statute. (*Daw* v. *Metropolitan Board of Works*, 12 C. B. N. S. 161.) So where a statute made an offence, felony, punishable with death without clergy, and a subsequent statute inflicted a milder punishment on the same offence, the later statute was held to be a virtual

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or provision of law by them repealed, or prevent the effect of any saving clause therein, or the application of any such

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repeal of so much of the former statute as related to the punishment of the offence. (*The King* v. *Davis*, 1 Leach C. C. 271; see also, *The King* v. *Heath*, 2 East. P. C. 609; *Ward v. Stevenson*, 1 New Sess. Cas. 162; *Robinson v. Emerson*, 4 H. & C. 352; *Mitchell* v. *Brown*, 1 E. & E. 267; *Henderson* v. *Sherborne*, 2 M. & W. 236; *Attorney-General* v. *Lockwood*, 9 M. & W. 391; *Pilkington* v. *Cooke*, 16 M. & W. 615; *Wrightup* v. *Greenacre*, 10 Q. B. 1.) A section which merely re-enacts a provision in a previous statute will not be considered as virtually repealing an inconsistent enactment in an Act made subsequently to the first but before the last Act. (*Morisse* v. *Royal British Bank*, 1 C. B. N. S. 67). A private Act is not to be held as repealing a former private Act by implication. (*Birkenhead Docks* v. *Laird*, 4 De G. Mc N. & G. 732.) Nor is a local Act, in the absence of clear indication to the contrary, to be held repealed by a subsequent public Act. (*Fitzgerald* v. *Champneys*, 2 Johns. & H. 31; s. c. 7 Jur. N. S. 1,006; *Purnell* v. *Wolverhampton Water Works Co.* 10 C. B. N. S. 576.) But a clause in a private Act, quite inconsistent with a clause in a subsequent public Act dealing with the same subject, must be held to be thereby repealed. (*Great Central Gas Co.* v. *Clarke*, 13 C. B. N. S. 838; *Parry* v. *Croydon Gas Co.* 11 C. B. N. S. 579; affirmed on appeal, 15 C. B. N. S. 568; *Bramston* v. *Mayor of Colchester*, 6 E. & B. 246.) The general principle is that a general Act is not to be construed to repeal a particular Act, unless there is some express reference to the previous legislation on the subject, or unless the two Acts are necessarily inconsistent. (*Thorpe* v. *Adams*, L. R. 6 C. P. 125; *The Queen* v. *Champneys*, L. R. 6 C. P. 384.) Where an Act is repealed, it must, except as to transactions which are past and closed, be considered as if it had never existed. (*Ex parte Griswood*, 5 Jur. N. S. 1191; s. c. 4, De G. & J. 544; see also *per* Lord Tenterden, in *Surtees* v. *Ellison*, 9 B. & C. 752; *per* Lord Campbell, in *The Queen* v *The Inhabitants of Denton*, 18 Q. B. 770; *Taylor* v. *Vansittart*, 4 E. & B. 910; *per* Parke, B., in *Simpson* v. *Ready*, 11 M. & W. 346; *Bryant* v. *Hill* 23 U. C. Q. B. 96; *McDonald* v. *McDonell*, 24 U. C. Q. B. 424; but see *The Queen* v. *Thompson*, 16 Q. B. 832.) No proceedings can, in the absence of express legislation, be pursued under a repealed statute, although commenced before the repeal. (*Miller's case*, 1 W. Bl. 451; see also *The King* v. *McKenzie*, R. & R. C. C. 429; *The Queen* v. *Mawgan*, 8 A. & E. 496; *Davis* v. *Cary*, 15 Q. B. 418; *The Queen* v. *Thompson* 16 Q. B. 832; *Foster* v. *Pritchard*, 2 H. & N. 151; *Glaholm* v. *Barker*, L. R. 1 Ch. 223.) But where an Act directs a mode of procedure to be adopted as contained in a former Act, the repeal of such an Act does not repeal the procedure directed, which is to be considered as incorporated in the latter Act. (*The Queen* v. *Stock*, 8 A. & E. 605.) So it has been held that the repeal of a Statute does not, without express words, take away the power of the Court to make an order as for costs of an action to which a right has already vested under the repealed statute. (*Restall* v. *London and South Western Railway Co.* L. R. 3 Ex. 141.) "Statutes are not presumed to make any alteration in the Common Law further or otherwise than the Act does expressly declare; therefore in all general matters the Law presumes the Act did not intend to make any alteration; for if Par-

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parts or Acts, or of any Act or provision of law formerly in force, to any transaction, matter or thing anterior to the said repeal to which they would otherwise apply. (*d*) *New.*

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liament had had that design they would have expressed it in the Act." (*Per* Trevor, J., in *Arthur* v. *Bokenham*, 11 Mod. 150; see also, *per* Lord Ellenborough in *The Queen* v. *Axlett*, 1 B. &. P. N. R. 7; *Paget* v. *Foley*, 2 Bing. N. C. 679; *Salters' Co.* v. *Jay*, 3 Q. B. 109; *Truscott* v. *Merchant Tailors' Co.* 11 Ex. 855; Co. Litt. 115 *b*; Bac. Abr. Statute I. 4; 12 Rep. 29. See further, note *m* to sec. 204 of the Assessment Act.)

(*d*) Where a repealing statute is repealed, the first statute, unless there be legislation to the contrary, is thereby revived. (*Phillips* v. *Hopwood*, 10 B. & C. 39.) But where a contract for ensuring tickets in a lottery was held void by statute then made, such contract was held not to be set up as valid by a repeal of the statute after the contract and before suit. (*Jaques* v. *Withy*, 1 H. Bl. 65; approved in *Hitchcock* v. *Way*, 6 A. & E. 946.) Where a statute professes to repeal absolutely a prior law, and substitutes other provisions on the same subject, which are limited to continue only to a certain time, the prior statute is not revived after the repealing statute is spent, unless the intention of the Legislature to that effect is expressed. (*Warren q. t.* v. *Windle*, 3 East. 205.) If an expired statute is afterwards revived in another statute, the law derives its force from the first statute. (*Shipman, q. t.* v. *Henbest*, 4 T. R. 109; see also, *The King* v. *Phipoe*, 2 East. P. C. 599; *The King* v. *Morgan*, *ib.* 601.)

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# AN ACT TO AMEND AN ACT RESPECTING MUNICIPAL INSTITUTIONS IN THE PROVINCE OF ONTARIO.

(BEING 37 VIC. C. 16.)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

36 V. c. 48, s. 10.

Liability of territory detached from one county and annexed to another.

**1.** In case any locality is, under the tenth section of the Act respecting the Municipal Institutions in the Province of Ontario, passed in the thirty-sixth year of Her Majesty's reign, and chaptered forty-eight, detached from one County and annexed to another, the Council of the County to which the locality is annexed and the Council of the Village shall agree with the Council of the County from which such locality is detached, as to the amount (if any) of the County liabilities which should be borne by the locality so detached, and the times of payment thereof; and if the Councils do not agree within three months of the separation in respect of the said matter, the same shall be determined by arbitration under the said Act, and the amount (if any) so agreed or determined shall become a debt of the County to which the locality is attached, and such locality shall, until the said amount has been paid by the proceeds of such rates, continue subject to all rates which had been, prior to the separation, imposed for the payment of County debts or for the payment of bonuses or aids, granted by sections of the County to railways, or for the payment of local improvement debts; and the Council of the County or of the Village, as the case may require, shall pass such By-laws, and take such proceedings as may be necessary for levying the said rates; and shall, unless such Council has previously paid the amount to the Municipality so liable, pay over the same when collected to the Municipality which is liable for the debt on account of which the rates were imposed: Provided also, that this section shall apply to any territory which may be detached from one County and annexed to another, during the present session of the Legislature of Ontario, whether by Act of the Legislature or otherwise: and provided further, that in cases where the said Councils do not agree as aforesaid, the Governor in Council may before proclamation has been made, and upon the petition of a majority of the resident freeholders and householders of the said Village, and with the

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assent of at least two of the Councils of the Townships in which the said Village is situate, annul the incorporation of the said Village, and restore the same to its former position, as an Unincorporated Village, and the same shall thereupon be reinstated to its former position to the same extent as if no proceedings for incorporation had ever been taken.

Sec. 100 repealed.

**2.** Section one hundred of the said Act is hereby repealed, and the following is substituted in lieu thereof:

Oaths of voters.

100. The oaths or affirmations to be required of any person claiming to vote otherwise than in respect of a freehold, shall be as follows, or to such effect:—That he is of the full age of twenty-one years, and is a natural born or naturalized subject of Her Majesty; that he has not voted before at the election in the Township, Village or Ward, (*as the case may be,*) in which he is tendering his vote, and (*if tendering his vote for Mayor, Reeve or Deputy-Reeve;*) that he has not voted before or elsewhere in the Municipality, for the election of Mayor, Reeve or Deputy-Reeve, (*as the case may be;*) that he has not, directly or indirectly, received any reward or gift, nor does he expect to receive any, for the vote which he tenders at the election; that he has been resident within the Municipality for which the election is held for one month next before the election, and that he is (*or his wife is*) a householder or tenant within such Municipality, and that he is the person named or purporting to be named on the list of the electors, and that at the time of the last final revision and correction of the assessment roll upon which the list is based, he was actually, truly, and in good faith, possessed to his own use and benefit, as tenant or occupant, of the real estate in respect of which his name is entered on the said list; (*or in the case of a new Municipality in which there has not been any assessment roll, then instead of swearing to residence for one month next before the election, and referring to the list of electors, the person offering to vote may be required to state in the oath the property in respect of which he claims to vote; and that he is a resident of such Municipality.*)

Sec. 104 repealed.

**3.** Section one hundred and four of the said Act is hereby repealed, and the following substituted in lieu thereof:

Nomination meetings.

104. A meeting of the electors shall take place for the nomination of candidates for the offices of Aldermen in Cities, Councillors in Towns, and of Reeves, Deputy-Reeves and Councillors in Townships not divided into Wards, and Incorporated Villages, at noon, on the last Monday in

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December, annually, at such place therein, and in Cities and Towns, at such places in each Ward thereof, as shall from time to time be fixed by By-law, and the Deputy-Reeves shall be designated as first, second, third or fourth, according to the number to be elected; provided that in Townships divided into Wards, the nomination of candidates for the office of Reeve shall be held at ten of the clock in the forenoon, at such place in such Township as shall from time to time be fixed by By-law, and the Clerk shall preside at the meeting for the nomination of candidates for the office of Reeve, and that the nomination of candidates for the office of Councillor, to be elected in each Ward, shall take place at noon, at such place in the Township or in each Ward as shall be fixed by By-law.

Sec. 107 repealed.

**4.** Section one hundred and seven of the said Act is hereby repealed, and the following substituted in lieu thereof:

Places for holding elections.

107. The Council shall by By-law fix the places for holding the election, and also name the Returning Officers, who shall respectively hold the nomination for each Ward, and those who shall preside at the respective polling places.

*Quo warranto* proceedings on omitting to vacate seat.

**5.** In the event of any member of any Municipal Council forfeiting his seat at the Council or his right thereto, or of his becoming disqualified to hold his seat, or of his seat becoming vacant by disqualification or otherwise, he shall forthwith vacate his seat; and in the event of his omitting to do so at any time after his election, proceedings by *quo warranto* to unseat any such member, as provided by the said Municipal Act for the trial of controverted elections, sections one hundred and thirty-one to one hundred and fifty-two, both inclusive, may be had and taken, and such sections shall, for the purpose of such proceedings, apply to any such forfeiture, disqualification or vacancy.

Sec. 231, sub. 2, repealed.

**6.** Subsection two of section two hundred and thirty-one of the said Act is hereby repealed, and the following substituted in lieu thereof, and shall be read as subsection two of section two hundred and thirty-one of said Act:

By-law requiring assent of electors to be published.

(2.) The Council shall, before the final passing of the proposed By-law, publish a copy thereof in some public newspaper published within the Municipality, or, if there is no such newspaper, in some public newspaper published nearest the Municipality, or in the County Town, the publication to be continued in at least one number of such paper each week for three successive weeks, and shall also put up a copy of the By-law at four or more of the most public places in the Municipality.

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**7.** Section two hundred and thirty-seven of the said Act is hereby repealed, and the following substituted in lieu thereof:

Sec. 237 repealed.

Promulgation of by-laws.

237. Every promulgation of a By-law shall consist in the publication, through the public press, of a true copy of the By-law, and of the signature attesting its authenticity, with a notice appended thereto of the time limited by law for applications to the courts to quash the same or any part thereof; and the publication aforesaid shall be in a public newspaper published within the Municipality, or, if there be no such newspaper, then in the public newspaper published nearest the Municipality, or in the County Town; and the publication shall, for the purpose aforesaid, be continued in at least one number of such paper each week for three successive weeks.

**8.** Section two hundred and fifty-two of the said Act is hereby repealed, and the following substituted in lieu thereof:

Sec. 252 repealed.

Certain by-laws of county council not to be valid, unless passed at meeting specially called and held three months after notice, &c.

252. No such By-law of a County Council for contracting any such debt or loan for an amount not exceeding in any one year twenty thousand dollars, over and above the sums required for its ordinary expenditure, shall be valid, unless the same is passed at a meeting of the Council specially called for the purpose of considering the same, and held not less than three months after a copy of such By-law, as the same is ultimately passed, together with a notice of the day appointed for such meeting, has been published in some newspaper issued weekly or oftener within the County, or if there be no such public newspaper, then in a public newspaper published nearest to the County, which said notice may be to the effect following:

Form of notice.

The above is a true copy of a proposed By-law to be taken into consideration by the Municipality of the County (*or* united Counties) of at in the said County, (*or* united Counties), on the day of , 18 , at the hour of o'clock in the noon, at which time and place the members of the Council are hereby required to attend for the purpose aforesaid.

*G. H.*,
*Clerk.*

Sec. 331 repealed.

**9.** Section three hundred and thirty-one of the said Act is hereby repealed, and the following substituted in lieu thereof:

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331. Every other Town may, if the Governor in Council sees fit to make such an appointment, have a Police Magistrate; but no such appointment shall in the first instance be made for a Town not having more than five thousand inhabitants, until two-thirds of the members of the Council do, in Council, pass a resolution affirming the expediency thereof; and the said Council may, by such resolution, fix the salary to be paid to such Police Magistrate: Provided always that every Police Magistrate appointed before the passing of this Act in a Town with a less population than five thousand shall not be affected by this section. Police magistrate in towns.

**10.** Section three hundred and thirty-three of the said Act is hereby repealed, and the following substituted in lieu thereof: Sec. 333 repealed.

333. In every City there is hereby constituted a Board of Commissioners of Police, and in every Town having a Police Magistrate, the Council may constitute a like Board, and such Board shall consist of the Mayor, the Judge of the County Court of the County in which the City or Town is situate, and the Police Magistrate, and in case the office of County Judge or that of Police Magistrate be vacant, the Council of the City shall, and the Council of the Town may, appoint a person resident therein to be a member of the Board, or two persons so resident to be members thereof, as the case may require, during such vacancy; and such Commissioners shall have power to summon and examine witnesses on oath in all matters connected with the administration of their duties: Provided always, that the Council of any such Town may at any time, by By-law, dissolve and put an end to the Board, and thereafter the Council shall have and exercise all powers and duties previously had or exercised by the Board. Board of commissioners of police in cities and towns, of whom composed. Powers as to witnesses.

**11.** Section three hundred and thirty-nine of the said Act is hereby repealed, and the following substituted in lieu thereof: Sec. 339 repealed.

339. The Police Force in Cities and Towns having a Board of Commissioners of Police, shall consist of a Chief Constable and as many Constables and other officers and assistants as the Council from time to time deem necessary, but in Cities not less in number than the Board reports to be absolutely required. Police force in cities and towns.

**12.** Section three hundred and forty-four of the said Act is hereby repealed, and the following substituted in lieu thereof: Sec. 344 repealed.

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Constable n towns and villages.

344. The Council of every Town not having a Board of Commissioners of Police shall, and the Council of every Incorporated Village may, appoint one Chief Constable and one or more Constables for the Municipality, and the persons so appointed shall hold office during the pleasure of the Council.

Dissolution of present boards of police commissioners in towns.

**13.** Wherever in any Town there is now a Board of Commissioners of Police constituted under said Act, the Council of said Town may, by By-law, dissolve and put an end to said Board, and thereafter the Council shall have and exercise all powers and duties which might, under said Act, have been had or exercised by said Board, and unless and until so dissolved and put an end to, the said Board shall have and exercise all the powers and duties which, but for the passing of this Act, would have been exercised or had by said Board.

Sec. 372, sub. 6, repealed.

**14.** Subsection six of section three hundred and seventy-two of the said Act is hereby repealed, and the following substituted in lieu thereof:

Aid for roads, bridges and harbours.

(6.) For taking stock in or lending money, or granting bonuses to any incorporated Company, in respect of any road, bridge or harbour, within or near the Municipality, under and subject to the respective statutes in that behalf.

Sec. 379, sub. 15, repealed.

**15.** Subsection fifteen of section three hundred and seventy-nine of said Act is hereby repealed, and the following substituted in lieu thereof:

Prevention of growth of thistles and weeds.

(15.) For preventing the growth of Canada thistles and other weeds detrimental to husbandry, and compelling the destruction thereof; for the appointment of an Inspector with power to enforce the provisions of such By-law, for regulating his duties and for determining the amount of remuneration, fees or charges he is to receive for the performance of such duties.

Sec. 379, subs. 26, 27, 28, 29 and 30 repealed. Sec. 372 amended.

**16.** Subsections twenty-six, twenty-seven, twenty-eight, twenty-nine and thirty of section three hundred and seventy-nine of the said Act are hereby repealed, and section three hundred and seventy-two of the said Act is hereby amended by adding thereto the following subsections:

Weights and measures.

(20.) For appointing Inspectors to regulate weights and measures according to the lawful standard;

(21.) For visiting all places wherein weights and measures, steel yards or weighing machines of any description are used;

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(22.) For seizing and destroying such as are not according to the standard;

(23.) For imposing and collecting penalties upon persons who are found in possession of unstamped or unjust weights, measures, steel yards or other weighing machines;

(24.) For seizing and forfeiting bread or other articles when of light weight or short measurement.

Sec. 410 repealed.

**17.** Section four hundred and ten of the said Act is hereby repealed, and the following substituted in lieu thereof:

Jurisdiction of county councils over roads and bridges.

410. The County Council shall have exclusive jurisdiction over all roads and bridges lying within any Town or Village of the County, and which the Council by By-law assumes with the assent of such Town or Village Municipality as a County road or bridge until the By-law has been repealed by the Council, and over all bridges, across streams separating two Townships in the County, and over all bridges crossing streams or rivers over one hundred feet in width, within the limits of any Incorporated Village in the County, and connecting any highway leading through the County, and over every road or bridge dividing different Townships, although such road or bridge may so deviate as in some places to lie wholly or in part within one Township.

Sec. 412 repealed.

**18.** Section four hundred and twelve of the said Act is hereby repealed, and the following substituted in lieu thereof:

Roads or bridges assumed by county councils.

412. When a County Council assumes by By-law any road or bridge within a Township as a County road or bridge, the Council shall, with as little delay as reasonably may be, and at the expense of the County, cause the road to be planked, gravelled or macadamized, or the bridge to be built in a good and substantial manner; and further, the County Council shall cause to be built and maintained in like manner all bridges on any river or stream over one hundred feet in width, within the limits of any Incorporated Village in the County, necessary to connect any public highway leading through the County.

Maintenance of certain bridges in villages.

Sec. 413 repealed.

**19.** Section four hundred and thirteen of the said Act is hereby repealed, and the following substituted in lieu thereof:

Bridges between municipalities.

413. It shall be the duty of County Councils to erect and maintain bridges over rivers, forming or crossing boundary lines between two Municipalities (other than in the case of a City or separated Town) within the County

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and in case of a bridge over a river forming or crossing a boundary line between two Counties, or a County and a City, such bridge shall be erected and maintained by the Councils of the Counties or County and City respectively; and in case the Councils of such County and City, or the Councils of such Counties fail to agree on the respective portions of the expense to be borne by the several Municipalities, it shall be the duty of each Council to appoint arbitrators, as provided by this Act, to determine the amount to be so expended, and such award as may be made shall be final.

Sec. 463 repealed.

**20.** Section four hundred and sixty-three of the said Act is hereby repealed, and the following substituted in lieu thereof:

Drains into adjoining lots or across highways.

463. In case any person should find it necessary to continue an under-drain into an adjoining lot or lots, or across or along any public highway, for the purpose of an outlet thereto, and in case the owner of such adjoining lot or lots, or the Council of the Municipality, refuse to continue such drain to an outlet, or to join in the cost of the continuation of such drain, then the firstly-mentioned person shall be at liberty to continue his said drain to an outlet through such adjoining lot or lots, or across or along such highway; and in case of any dispute as to the proportion of cost to be borne by the owner of any adjoining lot or Municipality, the same shall be determined by the fence-viewers in the same manner as disputes within the Fence-Viewers' Act, excepting as to the amount of such award which shall be finally decided by the fence-viewers, irrespective of the provisions of section fourteen of said Fence-Viewers' Act, and their award shall be final.

Sec. 468 amended.

**21.** Section four hundred and sixty-eight of the said Act is hereby amended, by striking out the words "according to the frontage thereof" in the fifth and sixth lines of the said section, and inserting the same after the word "therein," in the eighth line of the said section.

Secs. 472, 473 and 474, repealed.

**22.** Sections four hundred and seventy-two, four hundred and seventy-three and four hundred and seventy-four of the said Act are hereby repealed, but such repeal shall not affect any thing legally done under said sections, or any of them, or any proceedings commenced under the said sections or any of them, which proceedings may be continued as if the said sections had not been repealed.

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# AN ACT TO AMEND AND CONSOLIDATE THE LAW RESPECTING THE ASSESSMENT OF PROPERTY IN THE PROVINCE OF ONTARIO. (a)

(32 VIC. CAP. 36.)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

*Preliminary Provisions.*

Title.

**1.** This Act may be cited as "The Assessment Act of 1869." (b)

Interpretation clause.

**2.** In this Act the words "The Province," or "This Province," mean the Province of Ontario; the word "*Gazette*" means Official *Gazette* of the Province of Ontario; the word "County" includes a Union of Counties, and the word "Township" a Union of Townships, while such Union continues; the words "County Council" include Provisional County Council; the words "Town and Village" mean respectively Incorporated Town and Village; the word "Ward," unless so expressed, does not apply to a Township Ward; the words "Municipality or Local Municipality"

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(a) The consolidation of the several Acts relating to the assessment of property in Upper Canada, is second only in importance to the consolidation of the several Municipal Acts by the Municipal Institutions Act just annotated. (See note *b* to sec. 1 of the Municipal Institutions Act.) The value of the two Acts, so far as the Province of Ontario is concerned, cannot be over estimated. They are to be read in *pari materia*, (*per* Gwynne, J., *In re Montgomery and Raleigh*, 21 U. C. C. P. 394,) and so ought to be construed together, (*The King* v. *Palmer*, 1 Leach, C. C. 352-355; *Doe d. Tennyson* v. *Yarborough*, 1 Bing. 24.) and, as it were, one statute. (*McWilliam* v. *McAdams*, 1 Macq. H. L. Cas. 120; see also, *Per* Campbell, C. J., in *Waterlow* v. *Dobson*, 27 L. J. Q. B. 55.) It has been held that a repealed statute in *pari materia* with an existing one, may be referred to for the purpose of construing the latter. (*Ex-parte Copeland*, 2 De G. M. & G. 914.)

(b) The practice of describing Acts of Parliament by short titles is of modern invention, but, owing to its utility, is becoming each session of Parliament of more general application. It is singular that while the Legislature have not, in the case of the Assessment Act, been unmindful of this practice, in the Municipal Act they have quite overlooked it. But for convenience, no doubt, while one will, under legislative sanction, be known and described as "The Assessment Act of 1869," the other, without legislative sanction, will be equally well known and as often described as "The Municipal Institutions Act."



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do not include a County, unless there is something in the subject or context requiring a different construction. (*c*)

Meaning of words, "lands," etc.

**3.** The terms "Land," "Real Property," and "Real Estate," respectively, include all buildings or other things erected upon or affixed to the land, and all machinery or other things so fixed to any building as to form in law part of the realty, and all trees or underwood growing upon the land, and all mines, minerals, quarries and fossils in and under the same, (*d*) except mines belonging to Her Majesty.

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(*c*) See, as to the proper construction of an Interpretation Clause, note *c* to sec. 1 of the Municipal Institutions Act.

(*d*) The Legislature have defined "Land," "Real Property," and "Real Estate," for purposes of taxation, as including the following:

1. All buildings or other things *erected upon* or *affixed to* the land, and machinery or other things so fixed to any building as to form in law part of the realty.
2. All trees or underwood growing *upon* the land.
3. All mines, minerals, quarries and fossils *in* and *under* the same, except mines belonging to Her Majesty.

The Legislature have not been more successful than many persons have been in giving an exact and correct meaning to the words used, for while providing that all buildings, &c., *upon* or *affixed to* the land, all trees, &c., *upon* the land, and all mines *in* and *under* it shall be included in the word *land*, &c., it has omitted the land or *soil* itself from the definition. (*Per* Wilson, J., in *Niagara Falls Suspension Bridge Co.* v. *Gardner*, 29 U. C. Q. B. 194-197.) "Real Estate" does not always consist of that species of property which is very obviously land in any sense. Keys of the Mansion, and title-deeds of the freehold, and titles of honour are realty. (*Ib.*) The Suspension Bridge between Ontario and the State of New York, across the Niagara Falls at Clifton, is "land." (*Ib;* see also, *Tepper* v. *Nichols*, 18 C. B. N. S. 121; *Wolmore* v. *Dear*, L. R. 7 C. P. 212.) There is first about three quarters of an acre of land or soil on which the abutments, &c., rest; secondly, stone towers and toll-house, built into and upon the land; and, thirdly, there is the bridge itself, consisting of iron wire and wood, suspended by and from the wire cables, which rest upon and pass over stone towers, and extend beyond them, and are attached to fastenings let into the soil. (*Niagara Falls Suspension Bridge Co.* v. *Gardner*, 29 U. C. Q. B. 197.) The land, stone towers and toll-house are land, real estate, and real property within the provisions of the Assessment Act. (*Ib.*) The only question is as to the bridge, which is suspended and secured in the way just mentioned. The bridge is 'affixed to the land' by its attachment to the cable, which is attached to posts or fastenings 'let into' the land, and it is so fixed as to form in law a part of the realty. . . . We have come to the conclusion that the bridge was and is land and real property within the operation and meaning of the Assessment Act, and was rightly rated as such by the assessor." (*Ib.* 199.) "That the one terminus of the bridge is out of the Province and in

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**4.** The terms "Personal Estate" and "Personal Property," include all goods, chattels, shares in incorporated companies, interest on mortgages, dividends from bank stock, money, notes, accounts and debts at their actual value, income and all other property, except land and real estate, and real pro-

Meaning of "personal property," etc.

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a foreign country cannot affect the quality of that part of the property which is in this Province, nor can it make any difference in this respect that the support of that terminus, and which support it is necessary the erection should have to give it the character of a bridge, is beyond this Province; for however supported at that end, or whether supported there or not, or whether usable as a bridge or not, with or without that support, it would still as to that part within the Province be real estate, erected and attached as it is at the terminus in this Province." (*Ib.* 109.) It has been held that the proprietors of water works, whose mains, pipes and other apparatus were laid down *in* and *under* the surface of land were liable to be rated under 11 Geo. III. cap. 12, as occupiers of land. (*The Queen* v. *East London Water Works*, 18 Q. B. 705; *The Queen* v. *West Middlesex Water Co.* 28 L. J. M. C. 135; *The Queen* v. *Birmingham Water Works Co.* 1 B. & S. 84; but see *In re Gas Co. and Ottawa*, 7 U. C. L. J. 104.) So the proprietors of land occupied by a canal and towing path, having on, and belonging to them, as incident thereto and necessary to the occupation and use thereof, certain posts for fastening vessels, stone bridges, culverts and a dry-dock. (*The Queen* v. *Overseers of Neath.* L. R. 6 Q. B. 707.) So the proprietors of a railway carried forward on arches and abutments *let into* and standing *in* land. (*Higgins* v. *Harding*, L. R. 8 Q. B. 7.) The Legislature having defined what they meant by land, that meaning ought not to be extended so as to include a harbour or land covered with water. (*Buffalo & Lake Huron Railway Co.* v. *Goderich*, 21 U. C. Q. B. 97.) Nothing was easier than for the Legislature to have said that harbours should be taxed, if it was intended to be so. (*Per* Burns, J., *Ib.* 103.) So in England, it has been held that a dock or basin, of which ninety-five acres were covered with water, was property other than land, within the meaning of 3 & 4 Wm. IV. cap. 90, secs. 33, 34. (*The Queen* v. *Peto*, 7 W. R. 586 s. c. 5 Jur. N. S. 1209.) The part covered with water may be held not to be taxable, and yet buildings and land not covered with water, used for the purpose of harbour, may be taxed. By recent English statutes (30 & 31 Vic. cap. 113, sec. 17), it is declared that the occupier of any land covered with water "shall pay to the sewer rate in respect to his property one-fourth part only of the rate in the pound payable in respect of houses and other property." Held, as to a Company possessed of a canal, of filter beds supported on brick arches, and sometimes covered with water and at other times not, of land used for keeping sand for the filter beds, and of land having therein iron pipes, mains and service pipes, that the canal and filter-beds were land covered with water, and assessable only at one-fourth the amount to be imposed on houses, &c., but that the land used for the purpose of keeping sand, and the land occupied by iron pipes, mains and service pipes were land that ought to be assessed at the full value. (*East London Water Works Co.* v. *Leyton Sewer Authority*, L. R. 6 Q. B. 669.)

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perty as above defined, and except property herein expressly exempted. (*e*)

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(*e*) The terms "Personal Estate" and "Personal Property," for purposes of taxation, are made to include the following:

1. All goods, chattles, shares in incorporated companies, money, notes, accounts and debts at their actual value.

2. Income and all *other* property except land and real estate and real property as above defined, and except property herein expressly exempted. See further, note *d* to sec. 3 of this Act.

A steamboat is clearly personal property. (*In re Hatt*, 7 U. C. L. J. 103.) So the interest of lessees of a road company. (*In re Hepburn*, *Ib.* 46.) So shares in incorporated companies. *Ex-parte Lancaster Canal Co.* 1 Deac. & Ch. 411; *Humble* v. *Mitchell*, 11 A. & E. 205; *Bradley* v. *Holdsworth*, 3 M. &. W. 422; *Duncuft* v. *Albrecht*, 12 Sim. 189; *Tempest* v. *Kilner*, 3 C. B. 249; *Pierpoint* v. *Brewer*, 15 M. & W. 201; *Freeman* v. *Appleyard*, 7 L. T. N. S.282; *Meyers* v. *Perigal*, 2. De G. M. & G. 599; *Sparling* v. *Parker*, 9 Beav. 450; *Walker* v. *Milne*, 11 Beav. 507; *Thornton* v. *Ellis*, 21 L. J. Ch. 714; *Entwistle* v. *Davis*, L. R. 4 Eq. 272; *Taylor* v. *Linley*, 2 De G. F. & J. 84. No distinction is to be made in respect of the shares of a company whose act contains no clause declaring that the shares should be personal estate. (*Edwards* v. *Hall*, 6 De G. M. & G. 74; but see *Ware* v. *Cumberlege*, 20 Beav. 503.) Bank stock, except as exempted, is included. (*Madison* v. *Whitney*, 21 Ind. 261; *Evansville* v. *Hall*, 14 Ind. 27; *King* v. *Madison*, 17 Ind. 48; *Connerville* v. *Bank*, 16 Ind. 105; *State Bank* v. *Madison*, 3 Ind. 43; *Gordon* v. *Baltimore*, 5 Gill, (Md.) 231; *Gordon* v. *Appeal Tax Court*, 3 How. (U. S.) 133; *Bank* v. *Chester*, 10 Rich. Law, (S. C.) 104; *State* v. *Charleston*, 5 Rich. (S. C.) 561; *Bulow* v. *Charleston*, 1 Nott & McCord, 527; *Cherokee Ins. Co.* v. *Justices*, 28 Ga. 121; *The Bank* v. *Mayor*, Dudley 130; see also, *Mayor* v. *Hartridge*, 8 Ga. 23; *Nashville* v. *Thomas*, 5 Coldw. (Tenn.) 600; *O'Donnell* v. *Bailey*, 24 Miss. 386; see further, note *s* to sub. 15 to sec. 9 of this Act.) Authority "to tax real and personal property" would not, unless expressed to the contrary in the statute, include money, notes, accounts, debts and choses in action. (*Johnson* v. *Lexington*, 14 B. Mon. 648-661; *Louisville* v. *Henning*, 1 Bush. (Ky.) 381; *Bridges* v. *Griffin*, 33 Ga. 113; but see *Jacksonville* v. *McConnel*, 12 Ill. 138; *Johnson* v. *Oregon City*, 2 Oregon, 327.) Nor would it, unless so expressed, give power to tax income. (*Savannah* v. *Hartridge*, 8 Ga. 23; but see *Linning* v. *Charleston*, 1 McCord, 345.) The intention of this Act is that all property *not* being land, real estate or real property, and *not* being exempt under the Act, *including* choses in action and income, should be taxed as personal estate or personal property. (See *State* v. *City Council*, 10 Rich. Law, (S. C.) 240; *City Council* v. *St. Philip's Church*, McM. (S. C.) Eq. 139; *State* v. *City Council* 4 Strobh. (Law,) 217; *State* v. *City Council*, 1 Mill. Ch. 40; *State* v. *City Council*, 5 Rich. Law, 561; *City Council* v. *Condy*, 4 Rich. Law, 254; *City Council* v. *State*, 2 Speers, (S. C.) 719.) But apparently an exception exists in the case of land covered with water, such as harbours, docks, &c. (See note *d* to sec. 3 of this Act.)

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Meaning of "property."

**5.** The term "Property," includes both real and personal property as above defined. (*f*)

Unoccupied lands to be called lands of non-residents, except, &c.

**6.** Unoccupied land shall be denominated "Lands of non-residents," unless the owner thereof has a legal domicile or place of business in the local Municipality where the same is situate, or gives notice in writing, setting forth his full name, place of residence and post-office address to the Clerk of the Municipality, on or before the thirtieth day of January in each year, that he owns such land, describing it, and requires his name to be entered on the assessment roll therefor, (*g*) which notice may be in the form and to the

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(*f*) All real property situate within the Province of Ontario, owned out of it, is liable to assessment in the same manner and subject to the like exemptions as other real property under this Act (37 Vic. cap. 19, sec. 1.) So all personal property within the Province in the possession or control of any agent or trustee for or on behalf of any owner thereof who is resident out of this Province, is liable to assessment in the same manner and subject to the like exemptions as in the case of the other personal property of a like nature under the Act. (*Ib.* sec. 2.) See further, note *d* to sec. 3 and note *e* to sec 4 of this Act.

(*g*) The rule is that "unoccupied land" *shall* be denominated "lands of non-residents." The exceptions created by this section are two—

1. Where the owner has a legal domicile or place of business *in* the local Municipality where the land is situate.
2. Where, being resident *out* of the Municipality, he gives notice, in writing, setting forth his full name, place of residence, &c., *and* requires his name to be entered on the roll.

What the Legislature meant was to make it the duty of the assessor to assess all lands in the name of the owner, where such owner resides *within* the Municipality, and is known to the assessor to be so resident, or where by diligent enquiry the assessor shall be able to discover that he is so resident. But the being *in fact* resident within the Municipality, or having a legal domicile or place of business there, is made an indispensable condition to the proprietor being assessed for the land upon the roll in his own name, &c., unless, indeed, being a resident *out* of the Township, Village, &c., he shall have signified to the assessor that he owns the land, *and* desires to be assessed therefor. (*Per* Robinson, C. J., in *Berlin* v. *Grange*, 1 Er. & Ap. 279, 284.) The assessor cannot legally of himself insert the name of a non-resident on the roll. There must, in such case, be the previous notice and requirement from the non-resident himself. "In my opinion it follows that the assessor has not *in himself* authority to insert the defendant's name on the roll as owner of these unoccupied lands." (*Ib. per* Draper, C. J., p. 289.) "It is not to be imagined . . . that it was intended by the Legislature to give to the assessors the right, upon their own view of the ownership of lands, to put them down upon their roll as the property of an individual, resident in *another* and perhaps a *distant*

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effect of schedule A. to this Act, (*h*) and the Clerk of the Municipality shall, on or before the first day of February in each year, make up and deliver to the assessor or assessors a list of the persons requiring their names to be entered on the roll, and the lands owned by them. (*i*)

The real estate of railway companies, &c.

7. The real estate of all Railway Companies is to be considered as lands of residents, although the Company may not have an office in the Municipality; except in cases where a Company ceases to exercise its corporate powers, through insolvency or other cause. (*k*)

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part of the Province, and thus throw upon such individuals the costs of an appeal or perhaps of an action, like the present, in which the production of a copy of the roll is declared to be evidence of the debt." (*Per* McLean, J., in *Berlin* v. *Grange*, 5 U. C. C. P. 224.) Unless the name of a non-resident owner be legally placed on the roll, no action will lie against him for the taxes due in respect of his land. If the land be rated as unoccupied land, without the name of a non-resident owner, the land only is liable for the amount of the taxes." (*Ib.*) In the case of real property, the owner not resident within the Province, and who has not required his name to be entered on the assessment roll, then if the land be occupied it shall be assessed in the name of and against the occupant as such, and he is to be deemed the owner thereof for the purpose of imposing and collecting taxes upon and from the same, under the provisions of this Act. (37 Vic. cap. 19, sec. 4.) But if the land be not occupied, and the owner has not requested to be assessed therefor, then it shall be assessed as the land of a non-resident, according to the provisions of the 34th section of this Act. (*Ib.*) It is not necessary that the name of such non-resident or owner be inserted in the assessment roll. It is sufficient to mention therein the name of the reputed owner, or the words "owner unknown," according to the assessor's knowledge and information. (*Ib.*)

(*h*) *In the form, &c.* See note *h* to sec. 238 of the Municipal Institutions Act.

(*i*) See note *h* to sec. 189 of Municipal Institutions Act.

(*k*) Where the owner of lands is non-resident, his name cannot, as a general rule, be entered on the roll unless upon notice and a requirement from him to that effect. (See note *g* to sec. 6.) A Railway Company, unless the Company has ceased to exercise its corporate powers through insolvency or other cause, is by this section made an exception. Railroad property, whether real or personal, in the absence of legislation to the contrary, is liable to taxation in the Municipalities where situate. (*Railroad Co.* v. *Wright*, 2 Rh. Is. 459; *Railroad Co.* v. *Connelly*, 10 Ohio St. 154; *Railroad Co.* v. *Clute*, 4 Paige. Ch. 384; *Railroad Co.* v. *County of Morgan*, 14 Ill. 163; *Wheeler* v. *Railroad Co.* 12 Barb. 227; *Railroad Co.* v. *Spearman*, 12 Iowa, 112; *Davenport* v. *Railroad Co.* 16 Iowa, 348; *Railroad Co.* v. *Alexandria*, 17 Gratt. (Va.) 176; *Railroad Co.* v. *Lafayette*, 22 Ind. 262; *Railroad Co.* v. *State*, 25 Ind. 177; *Applegate* v. *Earnst*, 3 Bush. (Ky.) 648; *Rome Railroad Co.* v. *Rome*, 14

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*Property liable to Taxation.*

**8.** All municipal, local or direct taxes or rates, shall, when no other express provision has been made in this respect, be levied equally upon the whole ratable property, real and personal, of the Municipality, or other locality, according to the assessed value of such property, (*l*) and not upon any one or more kinds of property in particular, or in different proportions.

All taxes to be levied equally upon the ratable property, when no other provision made.

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Ga. 275; *Baltimore* v. *Railroad Co.* 4 Gill. (Md.) 288; *Richmond* v. *Daniel*, 14 Gratt. (Va.) 385.

It is the duty of every Railway Company annually to transmit to the Clerk of every Municipality in which any part of the road or other real property of the Company is situate, a statement describing:

1. The value of all the real property of the Company, other than the roadway.
2. The actual value of the land occupied by the road in the Municipality, according to the average value of land so rated in the roll of the previous year in the locality. (Sec. 33 of this Act.)

It is then the duty of the Municipal Clerk to communicate the same to the assessor.

It thereupon becomes the duty of the assessor to transmit by post to any station or office of the Company, a notice of the total amount at which he has assessed the real property of the Company in his Municipality or Ward, distinguishing the value of the land occupied by the road and the value of the other real property of the Company. (Sec. 33 of this Act.)

(*l*) The intention is that whenever a Council determine to raise a certain sum for a certain purpose within the scope of their authority, the same shall be raised by assessment, to be laid equally upon the *whole ratable property*, according to the assessed value of such property, and not upon any one or more kinds of property. (*Doe d. McGill* v. *Langton*, 9 U. C. Q. B. 91.) Where a Municipal Council, instead of following the plain direction of the statute, by By-law imposed a tax on *wild lands* alone, the By-law was held to be illegal. So a general tax levied *exclusively* upon real property would be a discrimination in favour of personal property, and void. (*Gilman* v. *Sheboygan*, 2 Black, U. S. 510; *Knowlton* v. *Supervisors*, 9 Wis. 410; *Weeks* v. *Milwaukee*, 10 Wis. 242; *Lumsden* v. *Cross*, *Ib.* 282; *Zanesville* v. *Richards*, 5 Ohio St. 589; *Exchange Bank* v. *Hines*, 3 Ohio St. 1; *Attorney-General* v. *Plank Road Co.* 11 Wis. 42; *Muscatine* v. *Railroad Co.* 1 Dill. C. C. 536, *sed qu.*; see remarks of Robinson, C. J., in *Doe d. McGill* v. *Langton*, 9 U. C. Q. B. 91.) So taxation exclusively of the land of non-residents, or taxation of the same at a higher rate or in a different manner from the land of residents. (*City Council* v. *State*, 2 Speers, S. C. 719; *Nashville* v. *Althrop*, 5 Coldw. Ten. 554; see further *Bennett* v. *Birmingham*, 31 Pa. St. 15.) The declaration is not simply that *all Municipal taxes* shall be levied equally upon the whole ratable property, but that all Municipal *local* or direct taxes or *rates* shall be so. In the United States an attempt has been made to draw a distinction between "a tax" and "an assessment." (*Railroad Co.* v. *Spearman*, 12 Iowa,

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What property liable to taxation.

**9.** All land and personal property in the Province of Ontario shall be liable to taxation, (*a*) subject to the following exemptions, (*b*) that is to say:

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112; *Chicago* v. *Larned*, 34 Ill. 203; *Ottawa* v. *Spencer*, 40 Ill. 211.) But it is not very palpable. (*Baltimore* v. *Cemetery Co.* 7 Md. 517.) It is, however, there almost uniformly held that a provision requiring uniformity of taxation does not, in the absence of express language, apply to rates for local improvements. (*Draining Co. case*, 11 La. An. 338; *Surgi* v. *Snetchman*, *Ib.* 387; *Yeatman* v. *Crandell*, *Ib.* 220; see also *Weeks* v. *Milwaukee*, 10 Wis. 242; *Lumsden* v. *Cross*, *Ib.* 282; *State* v. *Portage*, 12 Wis. 562; *Bond* v. *Kenosha*, 17 Wis. 284; *Hill* v. *Higdon*, 5 Ohio St. 243; *Reeves* v. *Wood Co.* 8 Ohio St. 333; see, however, note *e* to sub. 3 of sec. 9 of this Act.) The power of taxation is in general restricted to property *within* the Municipality. (*Trigg* v. *Glasgow*, 2 Bush. (Ky.) 594; *St. Louis* v. *Ferry Co.* 11 Wall. 423.) In the last mentioned case Mr. Justice Swayne said, at p. 430, "The purpose of the Legislature in conferring authority of this nature was not to tax property through the proprietor, but to tax the things themselves by reason of their being 'within the city.'" There is no difficulty as regards land, because of its fixed *situs*. (See sec. 22 of this Act.) But as regards personal estate, in its nature movable and liable to be moved from place to place, there is much difficulty. If personal property at the time of the assessment be actually within the Municipality, it may be assessed irrespective of the residence or domicile of the owner. (*Finley* v. *Philadelphia*, 32 Pa. St. 381; *St. Louis* v. *The Ferry Company*, 11 Wall. 423; *Mills* v. *Thornton*, 26 Ill. 300; *Railroad Company* v. *Morgan County*, 14 Ill. 163; *Hoyt* v. *Commissioners of Taxes*, 23 N. Y. 228; *St. Louis* v. *Wiggens Ferry Co.* 40 Mo. 580; *New Albany* v. *Meekin*, 3 Ind. 481; *People* v. *Niles*, 35 Cal. 282; *Gardiner Co.* v. *Gardiner*, 5 Greenl. (Me.) 133; *Evansville* v. *Hall*, 14 Ind. 27; *Reiman* v. *Shepard*, 27 Ind. 288; *Madison* v. *Whitney*, 21 Ind. 261; *Powell* v. *Madison*, *Ib.* 335.) The share of a part owner of a steamboat, in the absence of express legislation, held not to be taxable where the owner was resident. (*New Albany* v. *Meekin*, 3 Ind. 481.) Nor a steamboat belonging to a resident of the city, but registered elsewhere, and only touching at the city during her trips up and down the river. (*Wilkey* v. *Pekin*, 19 Ill. 160.) But the contrary was held in Alabama. (*Buttle* v. *Mobile*, 9 Ala. 234; see further, *Oakland* v. *Whipple*, 39 Cal. 112; *Hays* v. *Pacific Steamship Co.* 17 How. U. S. 596; *St. Joseph* v. *Railroad Co.*, 39 Mo. 476; *Hoyt* v. *Commissioners of Taxes*, 23 N. Y. 224.) There is no right to tax steamboats coming occasionally within the Municipality, where such steamboats are owned by foreigners or non-residents. (*St. Louis* v. *Ferry Co.* 11 Wal. 423; but see *St. Louis* v. *Wiggins Ferry Co.*, 40 Mo. 580.) See further, sections 37, 38, 39, 40 and 41 of this Act, and notes thereto.

(*a*) See note *e* to sec. 4.

(*b*) The burden of taxation, when there is no express provision to the contrary, should fall equally upon the whole ratable property, real and personal, of the Municipality. (See sec. 8 of this Act.) This being so, provisions creating exemptions are to be strictly construed. (*Speak* v. *Powell*, L. R. 9 Ex. 25; *Orr* v. *Baker*, 4 Ind. 86; *Gordon* v. *Baltimore*, 5 Gill. (Md.) 231; *State* v. *Town Council*, 12 Rich. (S. C.) Law, 339;

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*Exemptions.*

(1.) All property vested in or held by Her Majesty, or vested in any public body, or body corporate, officer or person in trust for Her Majesty, or for the public uses of the

All property belonging to Her Majesty.

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*Municipality* v. *Bank*, 5 Rob. La. 151; *Municipality* v. *Railroad Co.* 10 Rob. La. 187; *Trustees* v. *McConnell*, 12 Ill. 138; *People* v. *McCreery*, 34 Cal. 433; *Railroad Co.* v. *Alexandria*, 17 Gratt. Va. 171; *East Saginaw Manufacturing Co.* v. *East Saginaw*, 19 Mich. 259; s. c. 2 Am. R. 82.) Thus an exemption of certain property from taxation "by any law of the State" is not an exemption from a street assessment. (*In re Mayor, &c.*, 11 Johns. 77; see also, *People* v. *Mayor, &c.*, 4 N. Y. 419, 432; *Bleecher* v. *Ballou*, 3 Wend. 263; *Sharp* v. *Spier*, 4 Hill, N. Y. 76, 82; *Presbyterian Church* v. *New York*, 5 Cow.; *Lafayette* v. *Male Orphan Asylum*, 4 La. An. 1; *Mayor, &c., New York*, v. *Cashman*, 10 Johns. 96; see also, *The Queen* v. *Mayor of Oldham*, L. R. 3 Q. B. 474; *Telargoch Lead Mining Co.* v. *Guardians of St. Asaph's Union*, *Ib.* 478; *The Queen* v. *St. George's Union*, L. R. 7 Q. B. 90.) So an exemption from "any tax or public imposition whatsoever," held not to exempt from the rate necessary to pay for local improvements. (*Baltimore* v. *Cemetery Co.* 7 Md. 517; see also, *Dolan* v. *Baltimore*, 6 Gill. Md. 394; *Pray* v. *Northern Liberties*, 31 Pa. St. 69; *Northern Liberties* v. *St. John's Church*, 13 Pa. St. 104; *Lockwood* v. *St. Louis*, 24 Mo. 20; *Garrett* v. *St. Louis*, 25 Mo. 505; *Egyptian Levee Co.* v. *Hardin*, 27 Mo. 495; *St. Louis Public Schools* v. *St. Louis*, 26 Mo. 468; but see *Emery* v. *Gas Co.* 28 Cal. 345; *Taylor* v. *Palmer*, 31 Cal. 240; *Brightman* v. *Kirner*, 22 Wis. 54.) So an exemption of a Railroad Company from any "further or other tax or imposition upon it" has been held not to exempt the Company for rates for local street improvements. (*State* v. *Newark*, 3 Dutch, N. J. 185.) So an exemption of a private corporation "from taxes, charges and impositions" has been held not to exempt from local street improvements. (*In re Mayor, &c.*, 11 Johns. 77; *Paterson* v. *Society*, 4 Zab. 385; see also, *Paine* v. *Spratley*, 5 Kansas, 525; *Chicago* v. *Colby*, 20 Ill. 614; *Trustees* v. *Chicago*, 12 Ill. 403; *Ottawa* v. *Trustees*, 20 Ill. 423; see, however, note *e* to sub. 3 of sec. 9 of this Act.) An illegal exemption does not necessarily avoid the By-law by destroying the equality of the charge. Nor is the illegal exemption of another from taxation any ground for an injunction against the Corporation, unless plaintiff is thereby so injured as to be compelled to pay substantially more than his proportion of the tax. (*Page* v. *St. Louis*, 20 Mo. 136.) An omission on the part of an assessor to assess certain property liable to taxation, whether arising from a misapprehension of law or mistake of fact, will not avoid the general assessment. (*People* v. *McCreery*, 34 Cal. 43; see also, *Williams* v. *School District*, 21 Pick. 75; *Weeks* v. *Milwaukee*, 10 Wis. 242; *Kneeland* v. *Milwaukee*, 15 Wis. 454; *Dean* v. *Gleason*, 16 Wis. 1; *Hersey* v. *Supervisors*, *Ib.* 185; *Bond* v. *Kenosha*, 17 *Ib.* 284.) It was at one time clearly held that the assessment of property exempt by law from assessment is so far a nullity as to render an appeal to the Court of Revision unnecessary, and the decision by that Court or the County Judge to the contrary of no binding effect. (*Great Western Railway* v. *Rouse*, 15 U. C. Q. B. 168; *London* v. *Great Western Railway Co.* 17 U. C. Q. B. 262;

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Province; and also all property vested in or held by Her Majesty, or any other person or body corporate, in trust for or for the use of any tribe or body of Indians, and either unoccupied or occupied by some person in an official capacity. (*c*)

Indian lands.

But if occupied not officially.

(2.) When any property mentioned in the preceding clause number one, is occupied by any person otherwise than in an official capacity, the occupant shall be assessed in respect thereof, but the property itself shall not be liable. (*d*)

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*Shaw* v. *Shaw*, 21. U. C. Q. B. 432; *Shaw* v. *Shaw*, 12 U. C. C. P. 456.) But later authorities have greatly shaken, if not completely destroyed, that position. (*Toronto* v. *Great Western Railway Co.* 25 U. C. Q. B. 570; *Scragg* v. *City of London*, 26 U. C. Q. B. 265, 271; s. c. on appeal, 28 U. C. Q. B. 457; *Niagara Falls Suspension Bridge Co.* v. *Gardner*, 29 U. C. Q. B. 194, 200; see further, sec. 60 of this Act, and notes thereto.)

(*c*) The property exempt by this subsection is:

1. All property *vested* in *or held by* Her Majesty, or vested in any public body or body corporate *in trust* for Her Majesty or for the public uses of the Province.
2. All property *vested* in or *held* by Her Majesty or any other person or body corporate *in trust* for or for the use of any tribe or body of Indians, and either unoccupied or occupied by such person in an official capacity.

Property, whether freehold or leasehold, in the use or occupation of the Crown, or of any person or persons in his or their official capacity as servants of the Crown, is not assessable. (*Shaw* v. *Shaw*, 12 U.C.C.P. 456; *The Secretary of War* v. *Toronto*, 22 U. C. Q. B. 551.) So property held by the Crown and not granted, located or leased, so far as the interest of the Crown is concerned. (*Street* v. *Kent*, 11 U. C. C. P. 255; see also *Street* v. *Simcoe*, 12 U. C. C. P. 284; s. c. 2 Er. & Ap. 211; *Austin* v. *Simcoe*, 22 U. C. Q. B. 73.) But the statute does not say that land which has once been legally charged with an assessment shall become discharged of it when and because it comes into the possession of the Crown. (*The Secretary of War* v. *Toronto*, 22 U. C. Q. B. 551; see also *Lord Colchester* v. *Kewney*, L. R. 1 Ex. 368. See further, *Lord Bute* v. *Grindall*, 1 T. R. 338; *Greig* v. *University of Edinburgh*, L. R. 1 H. L. Sc. 348; *Attorney-General* v. *Dakin*, L. R. 3 Ex. 288; *The Queen* v. *McCann*, L. R. 3 Q. B. 677; *Mersey Docks* v. *Cameron*, *Jones* v. *Mersey Docks Co.* 11 H. L. C. 443.)

(*d*) The exemption mentioned in the preceding subsection as to property vested in or held by Her Majesty, &c., is here qualified by an enactment that the *occupant* shall be liable to assessment, provided he do not occupy in an official character, but the *property* itself is not to be liable. (*Per* Draper, C. J., in *Street* v. *Kent*, 11 U. C. C. P. 260.) A person having the mere possession of a lot of land vested in the Crown, determinable at any moment, has not such an estate as will qualify him for office under the Municipal Institutions Act, but is nevertheless rightly assessed under this Act. (*The Queen et rel Lachford* v. *Frizell*, 9 U. C. L. J. N. S. 27.)

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(3.) Every place of worship, and land used in connection therewith, churchyard or burying ground. (*e*) Places of worship, etc.

(4.) The buildings and grounds of and attached to every University, College, incorporated Grammar School, or other incorporated seminary of learning, whether vested in a trustee or otherwise, so long as such buildings and grounds are actually used and occupied by such institution, or if unoccupied, but not if otherwise occupied. (*f*) Public educational institutions.

(5.) Every Public School House, Town or City or Township Hall, Court House, Gaol, House of Correction, Lock-up House, and Public Hospital, with the land attached thereto, and the personal property belonging to each of them. (*g*) School houses, city halls, etc.

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(*e*) The question whether or not a place of public worship is exempt from taxation for local improvements was raised in *Haynes* v. *Copeland*, 18 U. C. C. P. 150, and apparently the Court decided in favour of the exemption. Wilson, J., said, "Then it is said that the exemption of the church and school property from this local tax avoids the By-law by destroying the equality of the charge. . . . The defendants contend that as church and school property are exempt from all taxation, such property is necessarily exempt from local improvement rates. The eighth section of the Assessment Act is the one which provides how, in the absence of any express provision to the contrary, 'all Municipal, *local* or direct taxes or rates are to be levied.' Then section nine provides that 'all land and personal property shall be liable to taxation, subject to the following exemptions.' . . . So that *local* assessments were distinctly before the Legislature when these exemptions were framed, and among such exemptions are 'every place of worship, churchyard or burying-ground,' &c. There is no reason to suppose that the Legislature made any distinction in these exemptions between assessments for general and local purposes. It was not thought decent to tax a place of worship or a burying-ground," &c. (*Ib.* 161, 162.) In England it has been held that "a church" is neither a "house" nor "land," for the purpose of assessment under the Metropolis Management Acts 18 & 19 Vic. cap. 120, secs. 105-250, 25 & 26 Vic. cap. 102, sec. 77. (*Angell* v. *Vestry of Paddington*, L. R. 3 Q. B. 714.)

(*f*) This is not an absolute, but a qualified exemption, viz.: "so long as such building and grounds are unoccupied or actually used and occupied by such institution," but *not* "if otherwise occupied." A building erected for and used as elementary schools for the education of the poor, and two dwellings erected for the teachers of the schools, all vested in a trustee, were held not to be exempt under Eng. stat. 11 & 12 Vic. cap. 63, secs. 2, 69, from the payment of a rate for the paving of the street on which they abutted. (*Bowditch* v. *Wakefield Local Board of Health*, L. R. 6 Q. B. 567.

(*g*) The Legislature, in using the terms they do in exempting certain buildings, such as court-houses, gaols, places of worship and the like, and then exempting the real property of some institutions, and the real *and* personal property of other institutions, must have had

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Public roads, etc.

(6.) Every public road and way, or public square. (*h*)

Municipal property.

(7.) The property belonging to any County or local Municipality, whether occupied for the purposes thereof or unoccupied; but not when occupied by any person as tenant or lessee or otherwise than as a servant or officer of the Corporation for the purposes thereof. (*i*)

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in view the nature, object and purposes of these buildings and institutions. Thus:

1. Every place of worship, church yard or burying ground. (Sub 3.)
2. Every university, college, incorporated grammar school, or other incorporated seminary of learning, *and* the grounds of and attached thereto, &c. (Sub. 4.)
3. Every public school house, town or city or township hall, court house, gaol, house of correction, lock-up house, and public hospital, *with* the land attached thereto, *and* the personal property belonging to each of them. (Sub. 5.)
4. Every industrial farm, poor house, alms house, orphan asylum, house of industry and lunatic asylum, and every house belonging to a company for the reformation of offenders, *and* the real *and* personal property belonging to or connected with the same. (Sub. 9.)

The Legislature, it will be observed, does not exempt all hospitals, but only *public* hospitals. Lord Coke says, in *Sutton's case* (10 Rep. 31 a), that there is no legal hospital except where the poor persons benefited are themselves incorporated; and he says that where the corporate succession is vested in trustees to effectuate the purposes of the institution, there is no legal hospital. It seems, however, tolerably clear that a legal hospital in *that* sense is not meant where the words "public hospital" are used in this section. It is more reasonable to hold that the words are used in their popular sense, and that any institution which, though not in a strictly legal, might in a popular sense be called a public hospital, may claim exemption. (See *Lord Colchester et al* v. *Kewney*, L. R. 1 Ex. 368; *In re Appeal of Sisters of Charity of Ottawa*, 7 U. C. L. J. 157.)

(*h*) Public squares are as much public property as public roads and ways, and cannot, without a breach of trust, be applied to any use inconsistent with the purpose of their dedication. All such are made exempt from taxation. (See *Guelph* v. *Canada Co.* 4 Grant, 632; *Attorney-General* v. *Goderich*, 5 Grant, 402; *Attorney-General* v. *Brantford*, 6 Grant, 592; *Attorney-General* v. *Toronto*, 10 Grant, 436.)

(*i*) There could be no object in the Council of any County, City, Town, Township or Village, levying taxes on its own property. Hence all such, whether occupied for the purposes thereof or unoccupied, are exempt. But it is not said that the occupants thereof, when occupied for purposes of gain, shall be exempt from taxation. (See notes *c* and *d* to subs. 1 and 2 of sec. 9 of this Act.)

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(8.) The Provincial Penitentiary and the land attached thereto. (*k*) Provincial penitentiary.

(9.) Every Industrial Farm, Poor House, Alms House, Orphan Asylum, House of Industry and Lunatic Asylum, and every house belonging to a Company for the reformation of offenders, and the real and personal property belonging to or connected with the same. (*l*) Poor houses, etc.

(10.) The property of every Public Library, Mechanics' Institute, and other public literary or scientific institution, and of every Agricultural or Horticultural Society, if actually occupied by such society. (*m*) Scientific institutions, etc.

(11.) The personal property and official income of the Governor General of the Dominion of Canada and the official income of the Lieutenant Governor of the Province. (*n*) Personal property of governor.

(12.) The houses and premises while occupied by any of the officers, non-commissioned officers and privates of Her Majesty's regular Army or Navy in actual service, (*o*) and Imperial military or naval pay, salaries, pensions, etc.

(*k*) The Penitentiary, erected near the City of Kingston, in the County of Frontenac, is called "*The* Provincial Penitentiary of Canada," and is the institution here intended. (Con. Stat. Can. cap. 111.) The land attached thereto is also exempt.

(*l*) The institutions here mentioned are all of a charitable character, and therefore we find the Legislature, with as much liberality as possible, exempt not only the institutions themselves, but the "real *and* personal property belonging to or connected with the same."

(*m*) The property of every public library, mechanics' institute, and other public literary or scientific institution, appears to be absolutely exempt; but the property of an agricultural or horticultural society appears to be only conditionally exempt, *i. e.*, "if actually occupied by such society." A society in the Town of Bradford, England, consisting of six hundred members, each having a share in the institution, and each making annual contributions to its funds, the primary object of the society being the formation of a library for books of all descriptions, allowed to be used only by members, was held exempt from taxation under Eng. Stat. 6 & 7 Vic. cap. 36. (*The Queen* v. *Bradford Library and Literary Society*, 7 W. R. 36.)

(*n*) These exemptions, no doubt, are because of "reasons of State." The official income and personal property of the Governor-General of the Dominion are certainly declared exempt for such reasons. The personal property of the Lieutenant-Governor is, however, not made exempt.

(*o*) This subsection was amended by the introduction of the word "while" before the word "occupied" in the first line. The object is plainly to exempt the property mentioned *only* when occupied by any of the officers, non-commissioned officers and privates of Her Majesty's regular army and navy *in actual service*. (See note *c* to sub. 1 of sec. 9 of this Act.)

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the full or half-pay of any one in any one or either of such services; and any pension, salary, gratuity or stipend derived by any person from Her Majesty's Imperial Treasury or elsewhere out of this Province, and the personal property of any person in such Naval or Military services on full pay, or otherwise in actual service. (*p*) (Amended by 33 V. c. 27, s. 1.)

Property of officers on full pay.

Pensions under $200.

(13.) All pensions of two hundred dollars a year and under, payable out of the public (*q*) moneys of the Dominion of Canada or of the Province.

Income of farmers.

(14.) The income of a farmer derived from his farm, [and the income of merchants, mechanics or other persons derived from capital liable to assessment]. (Amended by 33 V. c. 27, s. 2.) (*r*)

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(*p*) The exemptions here are:

1. The full or half pay of any one in *any* of Her Majesty's naval or military services.
2. Any pension, salary, gratuity or stipend, derived by any person from Her Majesty's Imperial treasury *or elsewhere out of this Province.*
3. The personal property of any person in such military and naval services on full pay, or otherwise in actual service.

It would seem that the salary of a County Judge, derived as it is from the Government of the Dominion, is a salary which, though not derived from Her Majesty's Imperial treasury, is derived "*elsewhere* out of this Province," and so exempt.

(*q*) While *all* pensions derived by any person from Her Majesty's Imperial treasury or elsewhere out of the Province are by the preceding subsection exempt, *none* but pensions of two hundred dollars a year or under, payable out of the public money of the Dominion or Province, are here made exempt. (See *The Queen* v. *Mayor of Liverpool*, 8 A. & E. 176, as to the construction of such a provision.)

(*r*) The Act of 1868-9 only exempted "the income of a farmer derived from his farm." This, probably, was on the ground that the farm was taxed, and so it would be unfair to tax both the farm and the income derived from it. But until 24th December, 1869, there was nothing to exempt the income of merchants or others, derived from capital, although the capital was taxed. Then the 33 Vic. cap. 27, sec. 2 was passed, declaring "that subsection 14, of section nine of the said Act be amended by adding the following words thereto: 'and the income of merchants, mechanics or other persons *derived from capital liable to assessment.*'" In the United States it was held that power "to tax all real and personal estate within the corporate limits of the city," did not confer authority to tax income. (*Savannah* v. *Hartridge*, 8 Geo. 23; but see *Linning* v. *Charleston*, 1 McCord, 345). Or to tax capital employed in merchandize distinct from the articles of property in which the capital was invested. (*Municipality* v. *Johnston*, 8 La. An. 20.)

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(15.) So much of the personal property of any person as is invested in mortgage upon land, or is due to him on account of the sale of land, the fee or freehold of which is vested in him, or is invested in the debentures of the Province, or of any Municipal Corporation thereof, and such debentures. (*s*) Personal property secured by mortgage or provincial or municipal debentures.

(16.) The stock held by any person in any chartered bank, so long as there is a special tax on bank issues, but not the dividends thereof. (*t*) Bank stock.

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(*s*) Personal property is in general subject to taxation. The exemption here made is as to so much of the personal property of any person as is—

1. Secured by a mortgage upon land, or is due to him on account of the sale of land, the fee or freehold of which is vested in him.
2. Secured by the debentures of the Province, or of any Municipal Corporation thereof.

The reason of the first is, that the land itself, on which the mortgage security rests, is subject to taxes; and the second rests on fiscal considerations, the object being to create a bonus in favour of Government or Municipal debentures, so as to induce persons having money to invest, to invest in debentures, and so keep up as much as possible the price thereof. But *interest* on mortgages, when forming a portion of a person's income, is apparently not exempt. (See sub. 23 of this section.)

(*t*) In the United States most of the bank charters are granted by the Legislatures of the several States. These Acts of Incorporation are there looked upon as contracts between the individual stockholders and the State. (*O'Donell* v. *Bailey*, 24 Miss. 386.) If the State Legislature provide in the Act of Incorporation that there shall be none but State taxes imposed on the bank, a Municipal tax would be void. (*State Bank of Indiana* v. *Madison*, 3 Ind. 43.) But where there is no such provision in the charter of incorporation, a power to impose Municipal taxes, when conferred by Act of the State Legislature, may be exercised. (*Providence Bank* v. *Billings*, 4 Peters, 561; *Gordon* v. *The Appeal Tax Court*, 3 How. 133; *Gordon* v. *Baltimore*, 5 Gill (Md.) 231.) If the only power conferred were to tax "property within the limits of the city," that would not confer authority to tax bank stock. (*Savannah* v. *Hartridge*, 8 Geo. 23.) But it is by sec. 4 of this Act declared that the words "personal estate" or "personal property," shall include "shares in incorporated companies," "dividends from bank stock," &c. If there were no other section in the Act, and if the section itself stopped at the words "dividends from bank stock," it might be argued that the only power is to tax dividends from bank stock, and that banks are not incorporated companies whose shares may be taxed. But the section proceeds in the definition of personal estate and personal property so as to include "all *other* property except land and real estate as above described, and except property herein expressly exempted." This would be broad enough to cover all property not described or not exempted. Then reading that section in connection with the beginning of this section, which declares that "all land and personal property in the Province of Ontario shall be liable to taxation," and with the sub-

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Railroad stock.

Building societies.

(17.) The stock held by any person in any Railroad Company. (*u*) [And the shares of Building Societies: Provided always the interests and dividends derived from shares in such Building Societies shall be liable to be assessed, and so much of the personal property of any person as is invested in any Company incorporated for the purpose of lending money on the security of real estate: provided that this shall not exempt the interest or dividends derived from such investments.] (33 V. c. 27, s. 3.)

Property owned out of the Province.

(18.) All property, real or personal, which is owned out of this Province. (*v*)

Personal property equal to debts due.

(19.) So much of the personal property of any person as is equal to the just debts owed by him on account of such property, except such debts as are secured by mortgage upon his real estate, (*w*) or may be unpaid on account of the purchase money therefor.

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section here annotated, declaring that "the stock held by any person in any chartered bank, so long as there is a special tax on bank issues, but not the dividends thereof," the necessary inference is that bank stock, provided there be no special tax on bank issues, is taxable as much as the dividends thereof. But it is now expressly provided that "the shares held by any person in the capital stock of any incorporated or chartered bank doing business in this Province shall be exempt from assessment for Municipal or other local rates or taxes." (37 Vic. c. 19, sec. 3.) Any interest, dividends or income derived from any such shares held by any person resident in the Province, is deemed to come within and be liable to assessment" under the 35th section of this Act. (*Ib.*)

(*u*) The Legislature did not, in the original Assessment Act, exempt the stock of incorporated Companies from taxation, with the single exception of stock held in Railroad Companies. Those who take stock in Railroad Companies in Canada seldom do so for the sake of investment or with the expectation of profit. Most of those who have taken railroad stock with such an expectation have hitherto been disappointed. Subscribers for stock in financial or manufacturing Companies generally stand on a very different footing. But even as to certain financial Companies, the stock is by the amendment of the section—words added in brackets—exempted, while the dividends are not. This is to prevent what otherwise would exist—a double assessment.

(*v*) See note *l* to sec. 8 of this Act.

(*w*) If what a man owes on account of his personal estate be equal to or exceed the amount of his personal estate, his personal estate is exempt from taxation. This is because it is unfair to tax a man upon that which he does not really own, and cannot be said really to own so long as he owes the price of it, and must pay such price. The exception is where the debts are secured by mortgage on his real estate. This is because the land, or rather the owner of it, must, notwithstanding the incumbrance, pay taxes on the assessed value of the land.

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(20.) The net personal property of any person, provided the same be under one hundred dollars in value. (*x*) Personalty under $100.

(21.) The annual income of any person, provided the same does not exceed four hundred dollars. (*xx*) Income under $400.

(22.) The stipend or salary of any clergyman or minister of religion, while in actual connection with any church and doing duty as such clergyman or minister, to the extent of one thousand dollars, and the parsonage or dwelling house occupied by him, with the land thereto attached, to the extent of two acres and not exceeding two thousand dollars in value. (*y*) (33 V. c. 27, s. 4.) Minister's salary.

(23.) Rental or other income derived from real estate except interest on mortgages. (*yy*) Rental of real estate.

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(*x*) The *net* personal property, &c. So much of the personal property of any person as is equal to the just debts owed on account of such property is to be deducted from the value of his personal property. (Sub. 19 to this section.) The balance is his "*net* personal property." If the latter be under one hundred dollars in value, it is exempt from taxation.

(*xx*) Certain incomes are privileged from taxation. Thus: the income of the Governor General or Lieutenant Governor (sub. 11); the full or half pay of persons in Her Majesty's naval or military services (sub. 12); so much of incomes as may consist of pensions, salaries, gratuities or stipends derived by any person from Her Majesty's Imperial treasury or elsewhere out of the Province (*Ib.*); all Dominion or Provincial pensions of two hundred dollars or under (sub. 13); the income of a farmer derived from his farm, and the income of merchants or other persons derived from capital liable to assessment (sub. 14); the stipend or salary of any minister of religion while in actual connection with any church, and doing duty as such minister of religion, to the extent of one thousand dollars (sub. 22); rental or other income derived from real estate except interest on mortgages (sub. 23); all *other* incomes are subject to taxation. (See note *l* to sec. 8 of this Act.

(*y*) The 22nd subsection of section 9 was so broad as to exempt the stipend or salary of *any* minister of religion, no matter how large it was, and no matter how derived. The consequence was that several clergymen, either in no manner doing duty as such, but having large incomes as professors in universities, or otherwise nominally doing duty as clergymen, but having large incomes independently of their churches, made claim to exemption, and had their incomes exempted, though much better able to pay a tax on income than many professional men, business men and mechanics, who were not exempt from tax on income. This was felt to be such an injustice that the 33 Vic. cap. 27, sec. 4 was passed, repealing subsection 22 as it formerly stood, and substituting for it the section as it now stands.

(*yy*) If the owner of land were taxed for the land according to its value, and also taxed for the rental which he received as income from it, he would be twice taxed. (See note *t* to sub. 16 of this sec.)



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Household effects, books, etc.

(24.) Household effects of whatever kind, books and wearing apparel. (*z*)

(25.) [Repealed by stat. 34 V. c. 28, s. 1.]

*How Rates to be Estimated.*

How rates to be calculated.

**10.** In Counties and local Municipalities, the rates shall be calculated at so much in the dollar upon the actual value of all the real and personal property liable to assessment therein. (*a*)

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A person so situated was doubly taxed under the Act of 1859, and so the law continued till 1868, when it was altered by the sub-section here annotated. Rental is now exempt from taxation. Interest derived from mortgages on real estate is not exempt, for the reason mentioned in the note *s* to sub. 15 of this section.

(*z*) The bed and bedding and bedsteads in ordinary use by a debtor and his family, as well as the *necessary* wearing apparel of himself and family, together with certain specified articles of furniture and food, are also exempt from seizure and sale under execution. (Stat. 23 Vic. cap. 25, sec. 4.) *All* wearing apparel is, under this subsection, exempt from taxation. This would, probably, be held to include articles of jewelry in ordinary use. (*Montague* v. *Richardson*, 24 Conn. 338; *Towns* v. *Pratt*, 33 N. H. 345.)

(*a*) It is by section eight declared that "all Municipal, local or direct taxes or rates shall, when no other provision has been made in this respect, be levied equally on the whole ratable property, real *and* personal, of the Municipality," &c. (See note *l* to that section.) But no provision is made by that section as to the mode of levying the same. It is by this section enacted that "the rates *shall* be calculated at so much in the dollar upon the actual value." A By-law imposing a tax of so much an acre, arbitrarily, without reference to value, is bad. (*Doe McGill* v. *Langton*, 9 U. C. Q. B. 91.) So a By-law imposing one uniform rate of 5s. per foot frontage, without reference to value, for draining into the common sewers of a city. (*Ex parte Aldwell and Toronto*, 7 U. C. C. P. 104.) Whenever a By-law in any of these respects is illegal, the Court may quash it; but the Court will not, on an application for a mandamus, extra-judicially advise a Municipal Corporation as to the proper mode of assessment. (*In re Dickson and Gall*, 10 U. C. Q. B. 395.) Formerly the value in Cities, Towns and Villages was annual value, and in Counties and Townships actual value, and a process was necessary for capitalizing the annual values of real property at six per cent., and equalizing all values, with a view to the imposition of County rates. But since 1st January, 1867, the distinction has been abolished. Actual value is now the rule in all Municipalities. Under the old law, a By-law imposing a rate for County purposes, to be levied on actual value, and in Villages on annual value, was held not to be illegal. (*Grierson* v. *Ontario*, 9 U. C. Q. B. 623.) Under Con. Stat. U. C. cap. 31, secs. 155, 156 and 157, a portion of jury expenses to be borne by a City and County was to be in proportion to the assessed value of all the ratable property in each, and it was enacted that in comparing the value of ratable property in any City or Town and County for

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Priority of existing debentures.

**11.** All debentures issued before the first day of January, in the year of our Lord one thousand eight hundred and sixty-seven, by Municipal Corporations, under any By-law, and based upon the yearly value of ratable property at the time of passing such By-law, shall hold the order of priority which they occupied on the said first day of January, one thousand eight hundred and sixty-seven; (*b*) and each Municipal Corporation (having so issued debentures) shall levy a rate on the actual real value of the ratable property within the Municipality represented, sufficient to produce a sum equal to that leviable or produced on the yearly value of such property as established by the assessment roll for the year one thousand eight hundred and sixty-six; (*c*) and such rates shall be applied solely to the payment of such debentures, or interest on such debentures, according to the terms of the By-law under which they were issued. (*d*)

How rates for paying them to be calculated.

To be applied solely to such purposes.

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the purpose of the Act, "the assessed annual value shall be held to be ten per cent. of the actual value." So that although, for the general City purposes, property was to be rated at an annual value of $6 on an actual value of $100, yet as between the City and County, for jury expenses, the annual value of the City property was to be deemed ten per cent. of its actual value, which would make the actual value of City property for this purpose ten times six per cent., or sixty per cent. (instead of one hundred per cent.) of its actual value. The effect of this was to reduce the actual value of City property, which was generally rated much higher than County property, by throwing off forty per cent. of its actual value, and to make sixty per cent. of the actual value represent the total actual value. It was the mode under that Act adopted to equalize the Rural and City rating. But by and since the Act of 1866, all real and personal property are estimated at actual value in all Municipalities, and the rule prescribed by the Con. Stat. U. C. cap. 31, secs. 155-157 has been held to be superseded, greatly, as it is said, to the disadvantage of Cities. (*Frontenac* v. *Kingston*, 30 U. C. Q. B. 584; s. c. 32 U. C. Q. B. 348.)

(*b*) Before 1st January, 1867, in Cities, Towns and Incorporated Villages yearly, and not actual values prevailed. (See note *a* to sec. 10 of this Act.) By-laws of Cities, Towns and Incorporated Villages creating debts were up to that date necessarily based on yearly values. Debentures were issued on the security of such values and rights acquired by the purchasers that such values should, until the payment of the debentures, be maintained. The object of this section is to declare that such rights shall be maintained.

(*c*) It is necessary for the Corporation, under this part of the section: first, to estimate what amount in any year would be produced on the basis of a yearly value in 1866, and then to levy a rate on actual value "sufficient to produce a sum equal to that amount."

(*d*) The application otherwise would be a breach of trust, and subject the Council to be proceeded against in the Court of Chancery by way of injunction. (See *Wilkie* v. *Clinton*, 18 Grant, 557.)

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Rate for sinking funds.

2. In cases where a sinking fund is required to be provided, either by the investment of specific rate or amount, or on a rate on the increase in value over a certain sum, then such a rate shall be levied as shall at least equal the sum originally intended to be set apart. (*e*)

Rate of ⅓ cent per $, for paying debt to Consolidated Municipal Loan Fund.

**12.** In order to comply with the provisions of the Consolidated Municipal Loan Fund Act (Consolidated Statutes of Canada, chapter eighty-three), a rate of not less than one-third of a cent in the dollar upon the actual value of all ratable property shall be levied by all Municipalities indebted to the Municipal Loan Fund, unless a smaller rate would produce eight per centum upon the capital of the loan: (*f*)

Proviso.

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(*e*) See note *c* to sec. 11 of this Act.

(*f*) The balances due to the Municipal Loan Fund by certain Municipalities named in Schedule A to 36 Vic. cap. 47, are by that Act cancelled. The balances due to the Fund by the Municipalities named in Schedule B are to be deemed the sums mentioned in that Schedule, and Municipalities named in Schedule C are to receive on 1st February, 1874, the sums mentioned in Schedule C. (Secs. 1 and 2.) Municipalities indebted to the Fund may be required to assign any revenue producing investments made with money borrowed from the fund as security for the balances due by such Municipalities. (Sec. 4.) The Lieutenant Governor may, if the investments are of greater value than the balance due, require the investments to be absolutely assigned in discharge of the balance. (Sec. 5.) Interest at the rate of five per cent. or its equivalent is required to be paid for the year 1873. (Sec. 6.) New debentures are to be delivered before 1st September, 1873, for the balances due with interest. (*Ib.*) These debentures are to provide for payment by the same sums per annum, as nearly as may, as the Municipalities are now liable to pay. (Sec. 7.) Provided that no more shall be payable annually for twenty years than two cents in the dollar on the assessment of 1872 would provide for, after meeting the ordinary and necessary expenditure of the Municipality other than for schools, according to the assessment, and ordinary and necessary expenditure (other than schools) of the year 1872. (*Ib.*) No debenture is to allow more than twenty years for payment of principal. (*Ib.*) The debentures, notwithstanding irregularities, if any, in the proceedings are to be deemed valid. (Sec. 8.) These debentures may be distributed among the Municipalities entitled to money under the Act, (sec. 9,) and should be delivered at any time after 1st February 1874, subject to a claim for interest for detention after that date. (Sec. 10.) The moneys received by Municipalities under the Act can only be applied in aid of railways, of drainage, of the building or improvement of the court house or gaol, of the building or improvement of an hospital, of providing an industrial farm, a public park, house of industry or refuge, or in building or improving schools, public halls, bridges, harbours, piers or gravel roads, or in making other permanent improvements affecting the Municipality, or towards the reduction or payment of Municipal obligations

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Provided always, that if such rate of one-third of a cent in the dollar upon the actual value of ratable property, according to the assessment of any year, shall produce a less sum than five cents in the dollar, on the annual value of the property in the year one thousand eight hundred and fifty-eight, such a rate shall be levied as will produce a sum equal to that produced by a rate of five cents in the dollar on the assessment rolls of the year one thousand eight hundred and fifty-eight.

Estimates to be made yearly.

**13.** The Council of every County or local Municipality shall every year make estimates of all sums which may be required for the lawful purposes of the County or local Municipality, for the year in which such sums are required to be levied, (*h*) each Municipality making due allowance

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already contracted for permanent works, (sec. 12,) subject to the approval of the Lieutenant Governor. By-laws may be passed for the application of the money to some of the foregoing purposes, (sec. 13,) and satisfactory proof must be given that the Municipality has completed or otherwise performed the works. (Sec. 14.) The debts may be assigned to trustees as a fund for the payment of the new debentures. (Sec. 15.) No portion of the money is to be applied otherwise than as appropriated. (Sec. 16.) The existing Municipal Loan Fund debts are also to continue as security for the payment of the new debentures. (Sec. 17.) Municipal officers are strictly bound to provide for the payment of the indebtedness. (Sec. 18.) No treasurer or other officer is to pay any sum whatever out of any funds of the Municipality, until the sum then payable in respect of the new debentures has been paid. (Sec. 19.) A warrant may be issued for the collection of the amount due. (Sec. 20.)

(*h*) In making yearly estimates of the sums required, it will be necessary for the Council to make due allowance in respect of the following:

1. The cost of collection;
2. Abatement and losses which may occur in the collection;
3. Taxes on lands of non-residents that may not be collected;

and accordingly have a margin sufficient to cover drawbacks arising from any or all of the foregoing causes. It is not necessary that the By-law should set forth the estimates on which it is founded. (*Fletcher and Euphrasia*, 13 U. C. Q. B. 129.) Mentioning a specific sum to be raised for specific purposes may be treated as setting forth an estimate that such sum is required for those purposes. (*Per* Robinson, C. J. *Ib.* 133.) The Court will intend that proper estimates have been made, in the absence of evidence that they are wanting. (*Ib.*) A local Municipality has not, it seems, the power to pass a By-law of its own, imposing a rate in aid of a County rate. (*Ib.*) A By-law authorizing a levy of certain moneys for Township purposes, and *double* the amount required by the County for County purposes, is clearly bad. (*Ib.*) "To raise moneys for those same

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for the cost of collection and of the abatement and losses which may occur in the collection of the tax, and for taxes on the lands of non-residents which may not be collected.

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purposes to the full amount in one case, and to double the amount in the other, is, on the face of it, beyond the power of the Township Council, for it is exercising a power not only not conferred upon them, but expressly conferred upon another Municipal Corporation. The only argument offered to justify this course was that the Township Council had ascertained that, owing to the large proportion of lands held by non-residents, a sum very far short of that imposed by the County By-law would be collected by the collector on the roll; that a considerable deficiency would remain to be made up which the Township Treasurer would have no funds to meet, and therefore such a By-law was necessary to supply those funds. . . . For the purposes of this argument we will assume the object and intentions of the Township Council to be what are stated, and that the facts on which they rely as requiring them to take this course exist (though if our decision had to rest upon any such ground, it would have to be indispensable that all those facts should be established before us); but we think, assuming everything suggested, that will not sustain the By-law, *which is not, on the face of it, directed to the purpose of meeting a deficiency*, and does not even *suggest* any, if that would enable the Township Council to raise money by By-law expressly to meet it," &c." (*Per* Robinson, C. J., *Ib.* 132.) A By-law enacting "that the sum of three pence in the pound be levied and raised on all ratable property, to raise the sum of £375, to defray all expenses on the Township for the current year, *County and Township included*, and a portion of said sum to be laid out on repairs of roads and bridges as the Council thinks most wanted, and if any balance remain, to be handed over to the credit of the Township for the ensuing year," was quashed. (*White* v. *Collingwood*, 13 U. C. Q. B. 134.) Draper, J., said: "In our our opinion this By-law must be quashed altogether. As to the part imposing rates for County purposes, it is bad, for the reason given in the preceding case. (*Fletcher* v. *Euphrasia*, 13 U. C. Q. B. 129.) And then this By-law affords no means of telling how much must be deducted from the sum of £375 directed to be raised; nor yet can it be ascertained how much the rate of three pence in the pound must be reduced in order to raise that portion of £375 which the Township Council had authority to impose. There are also other apparent objections to this By-law which it is not necessary to advert to for the purpose of sustaining our judgment." (*Ib.* 135.) It is now expressly enacted that every local Municipal Council, in paying over . . . its share of any County rate *shall* supply out of the funds of the Municipality *any deficiency arising from the non-payment of the taxes*, but shall not be held answerable for any deficiency from the abatements of or inability to collect the tax on *personal* property." (Sec. 161 of this Act.) It has been intimated that a local Municipality has no power to add to the column headed "County Rate" an allowance for the cost of collecting the County rate and for the abatements and losses which might occur in the collection of it, and for taxes on the lands of non-residents which might not be collected. (*Grier* v. *St. Vincent*, 12 Grant. 330; s. c. 13 Grant. 512.) Mowat, V. C., said in the last case: "The policy of the Legislature appears to have been

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**14.** The Council of every Municipality may pass one By-law, or several By-laws, authorizing the levying and collecting of a rate or rates of so much in the dollar, upon the assessed value of the property therein as the Council deems sufficient to raise the sums required on such estimates. (*i*)

By-laws for raising money by rate.

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to guard, as far as possible, the money to be raised in the Township by its Municipal authority for Provincial, County, school and other special purposes from the control of the Township Council, these moneys not being raised by their authority, or not going to purposes over which they had jurisdiction." (*Ib.* p. 519.) And again: "It is now suggested that the eleventh section (same as thirteenth, above) of the Assessment Act, as explained by the Interpretation Act, sanctions what was done here. That section directs every local Municipality, in the estimates of the year, to make due allowance, . . . but says nothing as to the column in which the allowance is to be entered. . . . I think it is sufficiently apparent . . . that it is contrary to the intention and policy of the Legislature that the Township should mix up in the 'County Rate' column money of which they are to have the control, with the money levied for the County." (*Ib.* p. 520.) The Council of the County in apportioning the County rate among the local Municipalities, may, it is apprehended, make allowance for the contingences mentioned in this section, and so avoid the difficulties which arose in the preceding cases. A By-law imposing a rate clearly insufficient to raise the amount of money required may be quashed, (See note *i* to sec. 14 of this Act.)

(*i*) It is not necessary that a By-law should set forth the estimates on which it is founded. (See note *h* to sec. 13.) But the rate should be such as "the Council *deems sufficient* to raise the sums required in such estimates." This must be read in connection with subsection 4 of section 248 of the Municipal Institutions Act, which requires that "such special rate shall be *sufficient*, according to the amount of ratable property appearing by the last revised assessment rates, to discharge the debt and interest when repayable respectively," and subsection 6 of the same section, which requires the By-law to recite "*the amount* of the whole ratable property of the Municipality, according to the last revised or revised and equalized assessment rolls." In order to ascertain the amount of the rate, it is necessary for the Council to know the amount proposed to be raised, when payable, and the whole amount of the ratable property of the Municipality according to the last revised or equalized assessment rates. These are required to be recited in the By-law itself, in order that the Court and others may judge of the sufficiency of the rate to raise the sum required by the estimates. But even if there be a mistake as to the amount of the ratable property, or an error as to the sufficiency of the rate, it does not follow that the By-law must be set aside. (*Grierson* v. *Ontario*, 9 U. C. Q. B. 623.) Burns, J., said in this case: "I do not think the Legislature intended that the Court should be compelled to avoid a By-law because it could be made out by proof that some error was committed in a calculation, or something of that sort done which would in strictness be illegal." (*Ib.* 632.) In this case, the County Council, in estimating the actual value of the ratable property in the Village of Oshawa for 1851, made it £61,666, whereas it should have been £92,500, and yet the Court refused to

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If the amount collected falls short.

**15.** If the amount collected falls short of the sums required, the Council may direct the deficiency to be made up from any unappropriated fund belonging to the Municipality. (*k*)

Estimates may be reduced proportionably.

**16.** If there be no unappropriated fund, the deficiency may be equally deducted from the sums estimated as required, or from any one or more of them. (*l*)

When sums collected exceed estimate; appropriation of balance.

**17.** If the sums collected exceed the estimates, the balance shall form part of the general fund of the Municipality, and

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set aside the By-law. (*Ib.*) But if the amount of the special rate be unequal or plainly insufficient and so illusory, the objection would assume a substantial character calling probably for the summary interference of the Court. (*Per* Draper, C.J., in *Secord and Lincoln*, 24 U. C. Q. B. 142, 150.) In this case the sum mentioned in the By-law was $6,434,773, whereas the amount mentioned in the rate was $6,452,655, a difference "too small to require serious notice when the rate to be imposed was half a mill in the dollar," and so the Court refused to quash the By-law. (*Ib.*) But where it was clear and admitted that "the 5½d. in the pound on the sum stated in the By-law to be the value of the ratable property within the Municipality would not produce such an amount as would cover the payment, which, under the By-law, is appointed to be made within the year, but considerably less," the rule was made absolute to quash the By-law. (*Perry* v. *Whitby*, 13 U. C. Q. B. 564.) *Per* Robinson, C. J., "It will be found, I think, to come short by £30." (*Ib.* 567.) This By-law on the face of it provided "that if the rate in any one year should prove deficient, &c., such deficiency should be made up from the general fund of the Town." As to this, the Chief Justice said, "And the manner in which the By-law provides for making up the deficiency that may arise in the payment, even if it were clearly legal, would not still cure the objection, for the statute expressly requires that the rate imposed *shall be* in itself sufficient to cover it upon the basis of calculation assumed, and if not it declares that the By-law *shall* be void." (*Ib.* 567.) But still it is apprehended that it is not necessary that calculations should in the case of every By-law be strictly correct. It is not incumbent on a Municipal Council to raise all that is required, and no more than is required for ordinary purposes, by one By-law. Were this the law, it would be impossible, owing to contingencies such as mentioned in sec. 13 of this Act, and other contingencies of a like kind, for any Municipal Council to comply with it. The amount collected may either fall short or exceed the sum required. If short, the deficiency may be made up from any unappropriated fund belonging to the Municipality. (Sec. 15 of this Act.) If no unappropriated fund, the deficiency may be equally deducted from the sums estimated or from any one or more of them (sec. 16 of this Act) or a second By-law passed, under the section here annotated. (Sec. 14 of this Act.) If an excess, the surplus becomes a part of the general fund of the Municipality, unless otherwise appropriated. (Sec. 17 of this Act.)

(*k*) See note *i* to sec. 14 of this Act.

(*l*) See note *i* to sec. 14 of this Act.

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be at the disposal of the Council, unless otherwise specially appropriated; (*m*) but if any portion of the amount in excess has been collected on account of a special tax upon any particular locality, the amount in excess collected on account of such special tax shall be appropriated to the special local object. (*n*)

Yearly taxes to be computed from 1st January, unless otherwise ordered.

**18.** The taxes or rates imposed or levied for any year shall be considered to have been imposed and to be due on and from the first day of January of the then current year, and end with the thirty-first day of December thereof, (*o*)

(*m*) See note *i* to sec. 14.

(*n*) The preceding sections, secs. 14, 15, 16, as well as the first part of this section (17) relate more particularly to general estimates for general purposes. If any portion of the amount in excess has been collected on account of a special tax upon any particular locality, the general rule is not to apply. In such case the amount collected shall, instead of forming part of the general fund, be appropriated to the special local object and no other.

(*o*) By Con. Stat. U. C. cap. 55, sec. 16, it was declared that the taxes or rates levied or imposed for any year shall be considered to have been *imposed* for the then current year commencing 1st January and ending 31st December. It was apparently enacted to remove a difficulty, such as that which presented itself in *Mellish* v. *Brantford*, 2 U. C. C. P. 35. *In re Yarwood*, 7 U. C. L. J. 47, Hughes, Co. J., said: "The sixteenth (same as eighteenth) section of the Consolidated Assessment Act of Upper Canada, specifies that the taxes imposed for the year shall be considered to be so imposed for the current year, commencing on 1st January and ending with 31st December, unless otherwise expressly provided for by By-law. I consider, in the absence of such a By-law, if the taxes imposed for the year are to date from 1st January to 31st December, that the property upon which rates and taxes are assessed is to be that which the rated party owns or possesses within the same period, and no more; and if he were a resident of the Town when the assessment was taken, or after the 1st of January, he was properly assessed as a resident, because the assessment relates back to 1st of January in each year." In *Marr* v. *Vienna*, 10 U. C. L. J. 275, the same learned Judge said: "The facts which came out in this case show me that the decision *In re Yarwood*, 7 U. C. L. J. 47, was not correct in one particular. Had the appellant there been assessed as well in Yarmouth as St. Thomas in respect of the same income, an injustice would at once have presented itself, which I am satisfied would have led me to a conclusion different to the one I arrived at, because the statute never intended a man to pay taxes *twice* in the same year in respect of the same property. So that I am now satisfied the sixteenth (now eighteenth) section only fixes the Municipal fiscal year to commence on 1st January and to end on 31st December in each year (unless a Municipal By-law fix it otherwise) for all purposes for which rates and taxes are to be considered to have been imposed for any current year." In *Ford* v. *Proudfoot*, 9 Grant, 478; *Corbett* v. *Taylor*, 23 U.C.Q.B. 454, and *Bell* v. *McLean*, 18 U.C.C.P. 416, it was contended

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unless otherwise expressly provided for by the enactment or By-law under which the same are directed to be levied. (*p*)

*Appointment of Assessors and Collectors.*

Assessors and collectors to be appointed.

**19.** The Council of every Municipality, except Counties, shall appoint such number of Assessors and Collectors for the Municipality as they may deem necessary. (*q*)

Municipality may be divided into assessment districts.

**20.** And they may appoint to each Assessor and Collector the assessment district or districts therein, within which he shall act, and may prescribe regulations for governing them in the performance of their duties. (*r*)

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that taxes imposed for a particular year should be taken, not only as imposed, *but as due* from 1st January. But the Courts refused so to interpret this section. In *Corbett* v. *Taylor*, Draper, C. J., said: "We do not so intrepret this section of the statute, but read it as intended (merely) to fix the fiscal year for all Municipalities for the purpose of rates and taxes, and as providing that, no matter what part of a year a By-law imposing rates and taxes may be passed, the taxes shall be considered as imposed for the whole current year. The argument for the plaintiff, if pushed home, amounts to this: that on such a covenant, (against incumbrances) if entered into on 2nd January, the taxes for the current year would be in arrears on that day, if a tax or rate were imposed (at any time) within the year, and in effect the covenant would be broken as soon as made, although when entered into no tax or rate had been imposed." Wilson, J., in *Bell* v. *McLean*, 18 U.C.C.P. 416, said, "In one sense the tax may be said to be due when it is imposed by the passage of a By-law for that purpose; but it cannot be strictly said to be due until the collector has got his roll; nor even then, for he cannot distrain or take any compulsory proceedings to enforce payment until he has called at least once on the party taxed and demanded payment, or transmitted a statement by post demanding payment if the party be not resident within the Municipality." And again, "A person who pays the taxes imposed on him for a particular year before the end of that year pays the amount in advance. He pays it up to a day which has not yet arrived. The time for its payment has gone by, but the time for its complete accrual has still to come," (p. 421.) It is to be observed that the section here annotated declares not only that the taxes, &c., imposed or levied for any year shall not only be considered to have been *imposed* but "*to be due*" on, from and after 1st of January of the then current year. It remains for the Courts to decide in what sense the word "due" is used in this section. See further, secs. 107, 108 of this Act, and notes thereto.

(*p*) It is in the power of the Municipal Council to say by the By-law from what time the tax or rate shall be taken to have been imposed, &c. If there be no direction to that effect it will be considered as imposed and due from 1st January of the year in which passed.

(*q*) See sec. 199 of Municipal Institutions Act, and notes thereto.

(*r*) It is by sec. 199 of the Municipal Institutions Act and by sec. 19 of this Act that the Council of every Municipality, excepting

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*Duties of Assessors.*

**21.** The Assessor or Assessors shall prepare an assessment roll (*a*) in which, after diligent enquiry, he or they shall set down according to the best information to be had: (*b*)

Assessment roll to be prepared; its form, contents, &c.

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Counties, shall appoint as many assessors and collectors for the Municipality as are deemed necessary. This section enables the Council of each such Municipality to appoint to each assessor or collector the districts within which the assessor or collector is to act, *and* to prescribe regulations for his governance. These regulations, it is apprehended, ought to be by By-law.

(*a*) The assessment, as respects real property, is the mode provided for ascertaining the actual value thereof. Unless followed by the imposition of a rate, it creates no liability. None of the methods pointed out by the statute for the collecting and enforcing payment of a rate can apply until a rate has been actually imposed. (*Corbett* v. *Taylor*, 23 U. C. Q. B. 454) But the assessment roll, when completed, is the foundation of all proceedings with a view to elections or taxation. (See sec. 49 of this Act, and notes thereto.) And all copies and lists ought to correspond with it, for it is the primary or original roll. (*Per* Adam Wilson, J., in *Laughtenborough* v. *McLean*, 14 U. C. C. P. 180.) But while this is so, there is no special provision whatever declaring it to be an offence to add to or alter such a roll. (*The Queen* v. *Preston*, 21 U. C. Q. B. 86) An assessor is not bound to enquire into the trusts upon which lands are held, but to view each man's premises, and to find out whether or not he is assessable, or whether or not he comes under any of the exemptions allowed by law. (*Franchon* v. *St. Thomas*, 7 U. C. L. J. 245.) And a person improperly assessed as owner and served with notice of the assessment, may, by omitting to appeal, make himself liable as owner. (See sec. 60 of this Act, and notes thereto.)

(*b*) The duty of an assessor is, under this section, twofold:

1. To make diligent inquiry for the information suggested;

2. To set the results down according to the best information to be had.

If any assessor *refuse* or *neglect* to perform any duty required of him by this Act, he shall, upon conviction thereof before any Court of competent jurisdiction in the County in which he is assessor, forfeit to Her Majesty such sum as the Court shall order and adjudge, not exceeding one hundred dollars. (Sec. 175 of this Act.) If he make an *unjust* or *fraudulent* assessment, or wilfully and fraudulently enter on the roll the name of any person who should not be entered thereon, or, indeed, *wilfully* omits any duty required of him by this Act, he shall, upon conviction thereof before a Court of competent jurisdiction, be liable to a fine not exceeding two hundred dollars, and to imprisonment till the fine be paid, *or* to imprisonment in the common gaol of the County or City for a period not exceeding six months, *or* to both; such fine and imprisonment in the discretion of the Court. (Sec. 177 of this Act.) An assessor convicted of having made any unjust or fraudulent assessment shall be sentenced to the greatest punishment, both of fine and imprisonment, allowed by this Act. (Sec. 179 of this Act.) Proof, to the satisfaction of the jury, that any real

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Of residents. (1.) The names and surnames in full, if the same can be ascertained, of all taxable persons resident in the Municipality who have taxable property therein, or in the district for which the Assessor has been appointed. (*c*)

Of non-residents. (2.) And of all non-resident owners who shall have given the notice in writing mentioned in section six, and required their names to be entered in the roll. (*d*)

Property assessable. (3.) The description and extent or amount of property assessable against each. (*e*)

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property was assessed by the assessor at an actual value greater or less than its true actual value by thirty per centum thereof, shall be *prima facie* evidence that the assessment was unjust or fraudulent. (Sec. 178 of this Act.) Both real and personal property should be estimated by assessors at their actual cash value, as they would be appraised in payment of a just debt from a solvent debtor. (Sec. 30 of this Act.) The omission from the roll of a person or persons who ought to have been inserted in the roll does not affect the validity of the roll as regards those who are rightfully upon it. (See note *b* to sec. 9 of this Act.)

(*c*) "Taxable persons" may be either residents or "non-residents," who have requested their names to be entered on the roll. (See note *w* to sec. 41 of this Act.) The names and surnames, *in full*, of all such (if the same can be ascertained) should be entered on the roll, and that in alphabetical order. There cannot be too much particularity in this respect. The roll is, as it were, a judgment roll, the highest evidence of a debt, recoverable by process of a most summary character. Even the description of persons on the roll as executors or trustees does not absolve them from personal liability for taxes, or save their own goods from distress for taxes. (*Dennison* v. *Henry*, 17 U. C. Q. B. 276.) Persons assessed in a representative character, as trustee, guardian, executor or administrator, should, however, be assessed as such, with the addition to the name of the representative character. (Sec. 44 of this Act.)

(*d*) An assessor cannot legally of his own motion insert the name of a non-resident on the roll. His only power to do so is when the latter shall have given the notice in writing required by section six of the Act. "The plaintiffs seem to have proceeded on the idea that if the owner be *known*, the assessor might assess him on his roll by name for his lands within the Municipality, whether he himself was a resident within the Municipality or not. But the whole frame of the Act . . . shows that not to have been the intention." (*Per* Robinson, C. J., in *Berlin* v. *Grange*, 1 Er. & Ap. 283; see further, note *g* to sec. 6 of this Act.)

(*e*) The assessor should so set down the description *and* extent or amount of property assessable against each taxable person. If land, it should be assessed as granted, as subsequently divided, or as actually owned by the party taxable. If the person taxable be the owner of several lots, the lots should be as much as possible kept distinct, and not unnecessarily thrown together. (See notes to sec. 138 of this Act.) It is the duty of the assessor to assess Village lots the pro-

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(4.) And such particulars (*f*) in separate columns as follows: Further particulars.

Column 1.—The successive number on the roll.

Column 2.—Name of taxable party.

Column 3.—Occupation.

Column 4.—To state whether the party is a Householder, Freeholder or Tenant by affixing the letter "F." "H." or "T." as the case may be.

Column 5.—The age of the assessed party.

Column 6.—Name and address of the owner, where the party named in column two is not the owner.

Column 7.—School section.

Column 8.—Number of concession, name of street or other designation of the local division in which the real property lies.

Column 9.—Number of lot, house, &c., in such division.

Column 10.—Number of acres or other measure showing the extent of the property.

Column 11.—Number of acres cleared.

Column 12.—Value of each parcel of real property.

Column 13.—Total value of real property.

Column 14.—Value of personal property other than income.

Column 15.—Taxable income.

Column 16.—Total value of personal property and taxable income.

Column 17.—Total value of real and personal property and taxable income.

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perty of non-residents separately, placing opposite to each the value and amount of assessment. (*Black* v. *Harrington*, 12 Grant. 175.) A whole lot returned by the Surveyor-General must be assessed as one lot, though half of it be in one concession and half in another. (*Doe Upper* v. *Edwards*, 5 U. C. Q. B. 594.) On a grant of several lots, each must be separately assessed. (*Ib.*) See further, note *c* to sec. 138, and note *a* to sec. 146 of this Act.

(*f*) These particulars are required with a view to the imposition of taxes, statistical information, &c. The information should be diligently obtained, and, when obtained, carefully entered on the roll. So much, for weal or woe, depends on the state of the roll, that the greatest care should be used in the selection of competent persons to fill the office of assessor; and these persons when appointed should use the greatest diligence and accuracy in the performance of their duties. A slovenly assessment is often the forerunner of expensive litigation, and is at all times and under all circumstances a source of trouble and annoyance to all concerned. The rights of electors and their interests as ratepayers may alike be jeopardized by carelessness or ignorance in those to whom the law entrusts the discharge of most important duties.

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Column 18.—Statute labour, persons from twenty-one to sixty years of age, and number of days' labour.

Column 19.—Dog tax; number of dogs and number of bitches.

Column 20.—Number of persons in the family of each person rated as a resident.

Column 21.—Religion.

Column 22.—Number of cattle.

Column 23.—Number of sheep.

Column 24.—Number of hogs.

Column 25.—Number of horses.

Column 26.—Date of delivery of notice under section forty-eight.

Land to be assessed in the municipality or ward.

**22.** Land shall be assessed in the Municipality in which the same lies, and in the case of Cities and Towns, in the ward in which the property lies; and, this shall include the land of incorporated companies, as well as other property; (*g*) and when any business is carried on by a person in a Municipality in which he does not reside, or in two or more Municipalities, the personal property belonging to such person shall be assessed in the Municipality in which such personal property is situated, and against the person in possession or charge thereof as well as against the owner. (*h*)

When land to be assessed in owner's name.

**23.** Land occupied by the owner shall be assessed in his name. (*i*)

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(*g*) See note *l* to sec. 8 of this Act.

(*h*) Personal property of a person having a shop, factory, office or other place of business, must, as a rule, be assessed at the place of business. (Sec. 39.) If several places of business in different Municipalities, then, according to this section, at the place or places where situate (sec. 22) for that portion of personal property connected with the business carried on at each. (Sec. 40.) If no place of business, then at the place of residence. (Sec. 41.) See further, note *l* to sec. 8 of this Act.

(*i*) The word "owner" is here used as a word of a very wide signification. The assessor has nothing to do with the title or trust upon which land is held. Upon seeing land occupied by an apparent owner, the assessor is bound to assess the occupant for it, no matter upon what trust the freehold of the land is held. (See *Dennison* v. *Henry*, 17 U. C. Q. B. 276; *Franchon* v. *St. Thomas*, 7 U. C. L. J. 245.) In *Lister* v. *Lobley*, 7 A. & E. 124, the Trustees of a Turnpike Road were authorized to enter and take certain land, &c., making satisfaction to the *owners* or *proprietors* for their loss, and it was held that the composition was payable not only to the owners in fee simple, but to lessees for years. In *Chauntler* v. *Robinson*, 4 Ex. 163, which was an action brought by a person against his neighbour

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When land not occupied by the owner, but owner is known.

**24.** As to land not occupied by the owner, but of which the owner is known, and who, at the time of the assessment being made, resides or has a legal domicile or place of business in the Municipality, or who has given the notice mentioned in section six, (*k*) the same shall be assessed

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for not keeping the house of the latter in repair, whereby, &c., Parke, B., said: "The term 'owner,' as well as 'proprietor,' is ambiguous. It may mean that the defendant had the whole legal interest in the house at the time of the wrong complained of, or that he was owner of the whole or some interest, as distinguished from that of the tenant in possession; but in any understanding of this term there is no obligation towards a neighbour cast by law on the owner of a house, merely as such, to keep it repaired in a lasting and substantial manner," &c. (*Ib.* 170.) In *Hopkins* v. *Provincial Insurance Co.* 18 U. C. C. P. 74, a person having only a leasehold interest was held to be the owner within the meaning of a question put to him before the issue of the notice. In *Bowditch* v. *Wakefield Local Board of Health*, L. R. 6 Q. B. 567, a trustee, in whom was vested a public school for the education of poor children, was held to be the owner for the purpose of taxation, under secs. 2 and 69 of 11 & 12 Vic. cap. 63. If the person served as owner omit to appeal, he is bound by the assessment, whether owner or not. (*McCarrall* v. *Watkins*, 19 U. C. Q.B. 248.) It is the duty of the assessor to enter on the roll the names of all persons in occupation, whom, after diligent inquiry, he believes to be owners. It does not seem that a *personal* occupation of the lot is necessary. A lot may be used with another part of the same farm, and that without there being a house upon it, or even a barn—the house and farm buildings being on an adjoining farm. But the occupancy must be so visible that the assessor can see it. (*Bank of Toronto* v. *Fanning*, 17 Grant, 514; s. c. on appeal, 18 Grant, 391.)

(*k*) The duties of the assessor under the first part of this section relate to land not coming under the description of the previous section, as "land occupied by the owner," but to lands such as described in sec. 6 as "unoccupied land." These duties are, to assess the owner—

1. If known, *and* residing or having a legal domicile or place of business *within* the Municipality.

2. If, being resident without the Municipality, he has given the notice mentioned in sec. 6 of this Act.

The assessor has no legal right to place on the roll the name of a non-resident owner merely because he is known to him. His right to do so only arises when the latter has given the notice required by sec. 6 of this Act. (See notes to that section.) But in the case of a person residing in or having a legal domicile or place of business within the Municipality, his name, when known, may be placed on the roll. A man's place of residence may not be his domicile or place of business. There are cases in which place of abode and place of business mean the same thing. (See *Haslope* v. *Thorne*, 1 M. & S. 103; *Alexander* v. *Milton*, 2 C. & J. 424; *Roberts* v. *Williams*, 2 C. M. & R. 561; *Johnson* v. *Lord*, M. & M. 444.) But place of residence and place of business do not necessarily mean the same thing. (*The Queen* v. *Deighton*, 5 Q. B. 896; *The Queen* v. *Coward*, 16 Q. B. 819; *The Queen* v. *Hammond*, 17 Q. B. 772; *The Queen* v. *Gregory*, 1 E. & B. 600; *The Queen* v. *Spratley*, 6 E. & B. 363.)

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against such owner alone if the land is unoccupied, or against the owner and occupant if such occupant be any other person than the owner. (*l*)

When owner non-resident and unknown.

**25.** If the owner of the land be not resident, then, if the land is occupied, it shall be assessed in the name of and against the occupant and owner; but if the land be not occupied, and the owner has not requested to be assessed therefor, then it shall be assessed as land of a non-resident. (*m*)

Effect of land being assessed against owner and occupant.

**26.** When land is assessed against both the owner and occupant, or owner and tenant, the assessor shall (*n*) place

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(*l*) If the land be occupied the occupant should be assessed. If not the owner, both he and the owner should be assessed. If unoccupied, then the owner alone must be assessed. Occupation here meant is not simply possession as a child, servant or caretaker, but by a person having an interest of some kind in the land. The occupation need not be a personal one in this sense, that the occupant should have his house on it. It will be enough if he have his house elsewhere in the Municipality, and so work it as to be visibly possessed of it. (*Bank of Toronto* v. *Fenning*, 17 Grant, 514; *Warne* v. *Coulter*, 25 U. C. Q. B. 177; see also *Fryer* v. *Bodenham*, 19 L. T. N. S. 645.) But merely sinking a post in the ground or some other trifling act of that character will not be sufficient to constitute occupation. (*Grant* v. *Local Board of Oxford*, 19 L. T. N. S. 378.)

(*m*) The meaning of this section is not free from doubt. If land be occupied, no doubt it should be assessed in the name of the occupant. If unoccupied, and owned by a person living in the Municipality where he is owner, it may be assessed in his name. But if unoccupied and owned by a non-resident, it can only be assessed in his name on his request in writing. (See note *g* to sec. 6 of this Act.) This section provides that if the land be occupied "it shall be assessed in the name of and against the occupant *and* owner." The question is, whether this is to be done where the owner is a non-resident of the Municipality, and has not requested his name to be entered on the roll. The language of the section is broad enough to cover all owners, whether resident within or without the Municipality. But the narrower construction seems to be the correct one. Persons in the occupation of land in the sense that they are in exclusive occupation of any part of it, whether above or below, are liable to be rated in England for poor rate. (See *Pimlico &c., Tramway Co.* v. *Greenwich*, L. R. 9 Q. B. 9; (see further, *Allan* v. *Overseers of the Poor, Liverpool*, L. R. 9 Q. B. 180.)

(*n*) A strict compliance with this section is not necessary to the validity of an assessment. (*De Blaquiere* v. *Beeker et al*, 8 U. C. C. P. 167; *The Queen ex rel Lachford* v. *Frizell*, 9 U. C. L. J. N. S. 27.) In the last mentioned case Mr. Dalton said, "The name of the defendant is not set down under that of Henry Bowen and bracketed with it, nor is the assessment against the defendant separately numbered on the roll. Some other deviations from the statutory form will be observed. The defendant's name, however, is written in the general heading 'Names of Taxable Parties,' and that it was so written for

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both names within brackets on the roll, and shall write opposite the name of the owner the letter "F," and opposite the name of the occupant or tenant the letter "H" or "T," and both names shall be numbered on the roll: (*o*) Provided always, that no ratepayer shall be counted more than once in returns and lists required by law for Municipal purposes; and the taxes may be recovered from either or from any future owner or occupant, saving his recourse against any other person. (*oo*) Proviso.

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the purpose of assessing him is known from other facts. Are these deviations, then, so essential as to render the assessment void? After examining the English cases and our own, as far as I have been referred to or have been able to find them, I have come to the conclusion that the assessment is good. It would certainly seem an extraordinary thing, considering the class that assessors must necessarily come from, that variances from the form of the assessment should vitiate it." (See *Morgan* v. *Parry*, 17 C. B. 334, and *Brumfitt* v. *Bremner*, 9 C. B. N. S. 1; *Applegarth* v. *Graham*, 7 U. C. C. P. 171; but see also, *The Queen ex rel McGregor* v. *Ker*, 7 U. C. L. J. 67.) If an assessor or any other officer of a Municipality omit to follow the plain directions in an Act of Parliament, and any loss thereby arises to the Municipality, it would seem that the officer causing the loss would be held answerable therefor. (*Christie* v. *Johnson*, 12 Grant, 534.)

(*o*) The obligation of the landlord is *prima facie* to pay taxes. (See sec. 28.) If the tenant agree to pay taxes, the obligation is shifted as between them. But in regard to the Municipality, taxes may be recovered from either, and not only so, but from "any future owner or occupant," saving his recourse against any other person. (See *Smith* v. *Shaw*, 8 U. C. L. J. 297; *Holcomb et al* v. *Shaw*, 22 U. C. Q. B. 92; *Warne* v. *Coulter*, 25 U. C. Q. B. 177.)

(*oo*) The way in which this section is expressed would lead one to suppose that *future* owners or occupiers can alone be made liable when *both* the owner and occupant have been assessed, but that is not the proper construction to be placed on the section. It should be read in connection with sections 24 and 25. From sec. 23 to sec. 28 inclusively (same as sec. 21 to sec. 26 of Con. Stat. U. C. cap. 55), is copied from sec. 7 of the Assessment Act of 1853. The words therein contained "and the taxes thereon may be recovered from either or from any future owner or occupant, saving his recourse against the other party," had reference not to the particular case alone of owner and occupant being assessed together, *but of either of them being assessed separately.* "If they were both assessed, the taxes were to be recovered from either of them. And in *every* case, if the owner or occupant did not pay, the taxes were to be recovered from any *future* owner or occupant. This was plainly the construction of sec. 7 of the Act of 1853, for why were future owners or occupants made liable when both owner *and* occupant were assessed and not when the owner *or* occupant was singly assessed? In both cases the taxes are equally a special lien on the land, for which the land may be sold. Why should a *future* occupant be liable when his original assessed



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When land occupied by more owners than one.

**27.** When the land is owned or occupied by more persons than one, and all their names are given to the assessor, they shall be assessed therefor in the proportions belonging respectively to each; (*p*) and if a portion of the land so situated is owned by parties who are non-resident, and who have not required their names (*q*) to be entered on the roll, the whole of the property shall be assessed in the names given to the assessor, saving the recourse of the persons whose names are so given against the others. (*r*)

When tenants may deduct taxes from rent.

**28.** Any occupant may deduct from his rent any taxes paid by him, if the same could also have been recovered from the owner or previous occupant, (*s*) unless there be a special agreement between the occupant and the owner to the contrary.

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owner could still be resorted to? Or, why should a future owner be liable when the original assessed occupant is in possession, and, of course, liable? Either owner or occupant shall pay when both are assessed; and future owners and occupiers are liable in every case to pay, saving their recourse against any other person." (*Per* Wilson, J., in *Anglin* v. *Minis*, 18 U. C. C. P. 170, 177; see further, sec. 95 of this Act and notes thereto.) The goods of the future occupant cannot be legally distrained and sold for the taxes imposed on the *personal property* of the former occupant. (*Squire* v. *Moony*, 30 U. C. Q. B. 531.) But if any portion of the tax distrained for be in respect of the realty, trespass will not lie. (*Ib.*)

(*p*) Where on an assessment roll under, the general heading "Names of Taxable Parties," were entered the names of Ker, William and Henry, for two separate parcels of land, and in the proper columns were the letters "F" and "H," and in the columns headed "Owners" and "Address," opposite to the parcels of land, "Wm. Ker and Bros.," it was held that Wm. Ker and Henry Ker, and not "Wm. Ker and Bros.," were the persons in whose names the properties were rated. (*The Queen ex rel McGregor* v. *Ker*, 7 U. C. L. J. 67; see further, *The Queen ex rel Lachford* v. *Frizell*, 9 U. C. L. J. N. S 27.)

(*q*) See sec. 6 of this Act, and notes thereto.

(*r*) See notes to sec. 28 of this Act.

(*s*) If the lease contain no provision as to the payment of taxes, it is the duty of the landlord, as owner of the land, to pay them. (*Dove* v. *Dove*, 18 U. C. C. P. 424; see further, *Rook* v. *Mayor of Liverpool*, 17 C. B. N. S. 240; and *Sheffield Water Works Co.* v. *Bennett*, L. R. 7 Ex. 409.) But if between the owner and the occupant there be a special agreement to the contrary, of course there will not be the right to deduct taxes from rent. Defendant took a written agreement for a lease of certain premises, which lease was silent as to taxes, but verbally agreed to pay them; no lease was ever executed, owing to a disagreement on another point. Defendant occupied the premises for four years, paying taxes for three years without objection. When sued for rent subsequently accrued, he claimed to set off the taxes, on the ground that as the agreement made no

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Assessor to note non-residents, if required, on the roll.

**29.** The assessor shall write opposite the name of any non-resident freeholder who requires his name to be entered on the roll, as hereinbefore provided, (*t*) in the column number three, the letters "N. R.," and the address of such freeholder. (*u*)

How property estimated.

**30.** Real and personal property shall be estimated at their actual cash value, as they would be appraised in payment of a just debt from a solvent debtor: (*v*) [Provided that in estimating the value of mineral lands, such lands and the buildings thereon shall be valued and estimated at the value of other lands in the neighbourhood for agricultural pur-

Proviso.

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provision for them, and could not be added to by verbal evidence, they must fall on the landlord. Held that, having voluntarily made the payments in pursuance of his own agreement, even if it were without consideration, he could not recover back or set off such payments. (*McAnany* v. *Tickell*, 23 U. C. Q. B. 499.) It is not said in the Act when, or from quarter or month, the occupant may deduct the taxes from his rent; and under a similar enactment in England it was held that a tenant could not occupy for several years, paying taxes, and claim to deduct from his last quarter's rent the whole amount of taxes paid by him during the term. (*Stubbs* v. *Parsons*, 3 B. & Al. 516.) And our Act has in one case received a similar construction. (*Wade* v. *Thompson et al*, 8 U. C. L. J. 22.) An ordinary lease, under the words in the statute, containing a covenant "to pay taxes," covers a special rate created by a Corporation By-law, as well as other taxes. (*In re Michie and Toronto*, 11 U. C. C. P. 379.)

(*t*) See sec. 6, and notes thereto.

(*u*) The omission to do as here directed would not invalidate the assessment so far as made. (See *De Blaquiere* v. *Becker et al*, 8 U. C. C. P. 167; see further, note *n* to sec. 26.)

(*v*) There is nothing that men so much differ about as the value of property. (See *Mersey Docks Co.* v. *Liverpool*, L. R. 9 Q. B. 84; *The Queen* v. *London & North-Western Railway Co.* L. R. 9 Q. B. 134.) It is, to a great extent, a matter of opinion. The opinions of men on such a subject are very materially affected, more so than they are perhaps aware of, by the point from which they consider it. A man who is impressed with a consideration of how much a thing is worth, will entertain a widely different opinion from him who simply looks at it as a thing to be purchased in expectation of profit, whether by the employment of it or selling it again. *Per* Draper, C. J., in *McCuaig* v. *The Unity Fire Insurance Co.* 9 U. C. C. P. 88. Perhaps, after all, the best standard of value is that mentioned in this section—"actual cash value," such as the property would be appraised "in payment of a just debt from a solvent debtor." (See further, notes to sec. 178.) But it is no defence to an action for taxes, that the property was excessively rated. (*London* v. *The Great Western Railway Co.* 17 U. C. Q. B. 267; see also, *Niagara Falls Suspension Bridge Co.* v. *Gardner*, 29 U. C. Q. B. 194; see further, *Mersey Docks and Harbour Board* v. *Overseers of Birkenhead*, L. R. 8 Q. B. 445.)

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poses; (*w*) but the income derived from any mine or mineral work shall be subject to taxation in the same manner as other incomes under this Act.] (*x*) (33 V. c. 27, s. 5.)

What shall be deemed vacant land, and how its value shall be calculated in cities, &c.

**31.** In assessing vacant ground or ground used as a farm, garden or nursery, and not in immediate demand for building purposes, in Cities, Towns or Villages, whether incorporated or not, the value (*a*) of such vacant or other ground shall be that at which sales of it can be freely made; and where no sales can be reasonably expected during the current year, the assessors shall value such land as though it was held for farming or gardening purposes, with such per centage added thereto as the situation of the land may reasonably call for; and such vacant land, though surveyed into building lots, if unsold as such, may be entered on the assessment roll as so many acres of the original block or lot, describing the same by the description of the block or by the number of the lot and concession of the Township in which the same may have been situated, as the case may be: (*b*) Provided that in such case the number and description of each lot comprising each such block shall be inserted on the assessment roll, and each lot shall be liable for a proportionate share as to value, and the amount of the taxes if the property is sold for arrears of taxes. (*c*)

Proviso.

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(*w*) This exception was created in 1869 by the Act 33 Vic. cap. 27, sec. 5, which amended the original section by the addition thereto of the words above placed in brackets. As to what are mineral lands, see note *m* to sec. 42 of the Municipal Institutions Act.

(*x*) See note *r* to sub. 14 of sec. 9 of this Act.

(*a*) "The question of what is the proper principle of valuation is one extremely general in its application. It affects the pecuniary interests of almost every one, not excepting the Judges themselves, and we should therefore not go out of our way to express opinions upon it." (*Per* Robinson, C.J., in *In re Dickson and Galt*, 10 U. C. Q. B. 395, 398.)

(*b*) This section in effect divides vacant land into two classes. One class consists of lands of which sales can be reasonably expected during the current year; the other class, of lands of which no sales can be reasonably expected during the current year. Between the two there must be a difference of value, and a difference in the mode of assessment. The first is to be valued at the price at which sales can be freely made; the second is to be valued as though held for gardening or farming purposes, with such per centage added thereto as the situation of the land may reasonably call for. Any construction of the Act which confounds these two classes abrogates the one or other class, and if the second, is an evasion of the statute. (See remarks in 9 U. C. L. J. 232.)

(*c*) This is essential for the preservation of the relation of the lots to each other, so as properly to adjust the burden of taxation in the event of the sale of some portion thereof for taxes.

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When not held for sale, but for gardens, &c.

**32.** When ground is not held for the purposes of sale, but *bona fide* inclosed and used in connection with a residence or building as a paddock, park, lawn, garden or pleasure ground, it shall be assessed therewith at a valuation which, at six per centum, would yield a sum equal to the annual rental which, in the judgment of the assessors, it is fairly and reasonably worth for the purposes for which it is used, reference being always had to its position and local advantages. (*d*)

Railway companies to furnish certain statements to clerks of municipality.

**33.** Every Railway Company shall annually transmit, on or before the first day of February, (*e*) to the Clerk of every Municipality in which any part of the roadway or other real property of the Company is situated, a statement showing—first, the quantity of land occupied by the roadway and the actual value thereof, according to the average value of land in the locality, as rated on the assessment roll of the previous year; secondly, the real property, other than the roadway, in actual use and occupation by the Company, and its value; and thirdly, the vacant land not in actual use by the Company, and the value thereof as if held for farming or gardening purposes; and the Clerk of the Municipality shall communicate such statement to the assessor, who shall deliver at or transmit by post, to any station or office of the Company, a notice addressed to the Company of the total amount at which he has assessed the real property of the Company in his Municipality or Ward, showing the amount for each description of property mentioned in the above statement of the Company; (*f*) and such statement and notice respec-

Duties of clerks therewith.

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(*d*) The preceding section provides for the assessment of vacant land, or land used as a farm, garden or nursery, and not in immediate demand for building purposes. This section applies to land not held for purposes of sale, but *bona fide* inclosed and used as a paddock, park, lawn, garden or pleasure ground, used in connection with a residence or building; in which case the valuation is to be, not as for purposes of sale, but for the purpose for which the land is used, reference being had to its position and local advantages. This is to be done by assessing such land, with the residence or building, at a valuation which, at six per cent. per annum, would yield a sum equal to the annual rental which, in the judgment of the assessors, it is fairly and reasonably worth. (See *Dudman* v. *Vigar*, L. R. 6 H. L. C. 212.)

(*e*) *On or before*, &c. See note *h* to sec. 189 of the Municipal Institutions Act.

(*f*) Duties are cast upon the Railway Company, the Clerk of the Municipality, and the Assessor.

*The Railway Company* must annually transmit to the Clerk of the Municipality in which any part of the road or other real property of the Company is situate, a statement describing—

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tively shall be held to be the statement and notice required by the forty-fifth and forty-eighth sections of this Act. (*g*)

*Non-Resident Lands.*

Proceedings in case of non-resident lands.

**34.** As regards the lands of non-residents who have not required their names to be entered on the roll, (*h*) the Assessors shall proceed as follows:

To be inserted in roll separately.

(1.) They shall insert such land in the roll, separated from the other assessments, and shall head the same as "Non-residents' Land Assessments." (*i*)

When not known, to be subdivided into lots.

(2.) If the land be not known to be subdivided into lots, it shall be designated by its boundaries or other intelligible description. (*j*)

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1. The value of all the real property of the Company, *other than the roadway;*
2. The actual value of land occupied by the road in the Municipality, according to the average value of land as rated on the roll for the previous year in the locality.

*The Clerk* must communicate the foregoing notice to the Assessor.

*The Assessor* must deliver at, or transmit by post to, any station or office of the Company, a notice of the total amount at which he has assessed the real property of the Company in his Municipality or Ward, distinguishing the value of the land occupied by the road, and the value of the other real property of the Company. It is only the land occupied by the road (not the superstructure) that is liable to assessment. (*The Great Western Railway Co.* v. *Rouse*, 15 U. C. Q. B. 168; *London* v. *Great Western Railway Co.* 17 U. C. Q. B. 262; *Toronto* v. *The Great Western Railway Co.* 25 U. C. Q. B. 570.) The assessment of the land must be according to the average value of land in the locality. (*Great Western Railway Co.* v. *Ferman*, 8 U. C. C. P. 221.)

(*g*) The statement from the Railway Company to the Municipality need not be in any particular form. (*Great Western Railway Co.* v. *Ferman*. 8 U. C. C. P. 221.) And the delivery of the statement by the Assessor to the Company of the amount at which he has assessed the real property of the Company is necessary, to enable the Company, if dissatisfied, to appeal. (*London* v. *The Great Western Railway Co.* 16 U. C. Q. B. 500.) The omission of the Assessor to distinguish in his notice to a Railway Company between the value of the land occupied by the road, and their other real property, as required by the Act, does not absolutely void the assessment. (*Great Western Railway Co.* v. *Rogers*, 27 U. C. Q. B. 214.) It is only the subject of complaint to the Court of Revision. (s. c. 29 U. C. Q. B. 245.)

(*h*) See sec. 6 of this Act, and notes thereto.

(*i*) No action will lie for the recovery of taxes against a non-resident who has not required his name to be entered on the roll. (See note *g* to sec. 6.) The only remedy of the Municipality is against the land itself. (*Ib.*)

(*j*) If the land be not *known*, &c. It is the duty of the Assessor, under sec. 21, Nos. 8 and 9, to enter the number of the concession,

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When known to be subdivided into lots.

(3.) If it be known to be subdivided into lots, or be part of a tract known to be so subdivided, the Assessors shall designate the whole tract in the manner prescribed with regard to undivided tracts, and if they can obtain correct information of the subdivisions, they shall put down in the roll, and in a first column, all the unoccupied lots by their numbers and names alone, and without the names of the owners, beginning at the lowest number and proceeding in numerical order to the highest; in a second column, and opposite to the number of each lot, they shall set down the quantity of land therein liable to taxation; in a third column, and opposite to the quantity, they shall set down the value of such quantity, and if such quantity be a full lot, it shall be sufficiently designated as such by its name or number, but if it be part of a lot, the part shall be designated in some other way whereby it may be known. (*k*)

*Manner of Assessing Personal Property.*

How person deriving income from any trade or profession to be assessed.

**35.** No person deriving an income exceeding four hundred dollars per annum from any trade, calling, office, profession, or other source whatsoever, (*l*) not declared exempt by this Act, (*m*) shall be assessed for a less sum as the amount of his net personal property than the amount of such income during the year then last past, in excess of the said sum of four hundred dollars, but no deduction shall be made from the gross amount of such income by reason of any indebtedness, save such as shall equal the annual interest thereof,

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name of street, or *other* designation of the *local* division in which the real property is situate, and the number of lot, house, &c., in *such* division. The object is to have some intelligible local description. Here it is enacted that if the land be *not* known to be subdivided into lots, it *shall* be designated by its boundaries or *other* intelligible description.

(*k*) It is the duty of the Assessors, if they can obtain correct information as to the subdivisions, to put down in separate columns—

1. All unoccupied lots by their numbers and names alone, without the names of the owners, beginning at the lowest number and proceeding in numerical order to the highest.
2. The quantity of land in each lot liable to taxation.
3. The value of such quantity.

If the quantity be a full lot, it shall be designated as such by its name or number. If a part of a lot, the part shall be designated in some *other* way *whereby it may be known.*

(*l*) See note *r* to sec. 370 of Municipal Institutions Act.

(*m*) See sec. 9, subs. 13, 14, 15, 16, 17, 21 and 22 of this Act, and notes thereto, as to the incomes which are exempt from taxation.

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and such last year's income in excess of the said sum of four hundred dollars shall be held to be his net personal property, unless he has other personal property liable to assessment, (*n*) in which case such excess and other personal property shall be added together and constitute his personal property liable to assessment.

Personal property of corporate companies not to be assessed.

**36.** The personal property of an incorporated Company shall not be assessed against the Corporation, but each shareholder shall be assessed for the value of the stock or shares held by him as part of his personal property, unless such stock is exempted by this Act: (*o*) Provided always, that in Companies investing their means in gas works, water works, plank and gravel roads, manufactories, hotels, railways and tramroads, harbours or other works requiring the investment of the whole or principal part of the stock in real estate already assessed for the purpose of carrying on such business, the shareholders shall only be assessed on the income derived from such investment. (*p*)

Proviso.

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(*n*) This section is in its language somewhat involved. It is the first of the series of sections as to "*the manner* of assessing personal property." Income for the past year is to a certain extent made by the section the gauge of personal property for the current year. (See note *o* to sub. 12 of sec. 60.) The substance of the enactment appears to be, that a person having personal property liable to assessment exceeding in value the amount of his income for the past year, less deduction of interest on debt, he shall be assessed for the real value of such personal property; but no matter how much less in value his personal property be, in no case shall he be assessed for less than the amount of income, less interest on debt, as the net value of personal property. (See *In re Yarwood*, 7 U. C. L. J. 47.)

(*o*) This part of the section applies only to the assessment of the *personal* property of Incorporated Joint Stock Companies, where no investment is either required or made of the whole or principal part of the stock in real estate for the purpose of carrying on their business. In the case of such a Company, the stock, unless exempt, is taken as representing the value of the personal property of the Company for purposes of assessment. But such value is not to be charged *against the Company*. Each shareholder is to be assessed for the value of the stock or shares held by him as part of *his* personal property. As to what is personal property, see sec. 4 of this Act.

(*p*) If the capital, or principal part of the capital stock be invested in real estate for the purpose of carrying on the business, or for any other purpose, such real estate is subject to assessment, and being so, it is deemed fair that shareholders shall only be assessed on the income derived from the investment. The Suspension Bridge across the Niagara River, between the Province of Ontario and State of New York, owned by a Company, being real estate, was improperly

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**37.** The personal property of a partnership shall be assessed against the firm at the usual place of business of the partnership, (*q*) and a partner in his individual capacity shall not be assessable for his share of any personal property of the partnership which has already been assessed against the firm.

Personal property of partnerships, how and where to be assessed.

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assessed as personal estate. It was argued that it ought not to be assessed as real estate because the shares of the shareholders are liable to taxation. But the Court refused to give effect to the argument. (*Niagara Falls Suspension Bridge Co.* v. *Gardner*, 29 U. C. Q. B. 194.) Wilson, J., in delivering judgment, said: "It was also said it would be unfair to assess the bridge as real estate against the Company, because it is held by shareholders, and their *shares* are by the statute assessable against them respectively as personal property, and so the same property would be twice taxed and paid for. No doubt this is so; but we cannot help that. The land and erections are not less real estate because the interest of the owners in the same is rated as personal estate. The land is in the town of Clifton, where it should be rated and paid for. Where the shareholders are we do not know. There may not, so far as we judicially know, be one of them in the Province; or their shares may not be worth one farthing, and may not be computed by them in the return made of their personal property. But if it were otherwise, it could make no difference, for the reason against this property being assessed as land is quite as good a reason for the shares not being assessed as personal estate; and so, if the argument be good, it should escape taxation altogether. . . . The 37th section of the Assessment Act (same as sec. 38 of this Act) shows that this bridge should be considered as real estate, in which case, as the principal part of the stock consists of real estate, the shareholders are liable to be only assessed on the income derived from their investment. (*Ib.* pp. 199, 200.)

(*q*) It is no easy matter to say where the usual place of business of a partnership is, where the business is such that it cannot be conducted in one place, but necessarily in several places. Thus: Suppose a lumbering firm having an office in Toronto, getting out logs during the winter in different parts of the Province, floating the logs in spring in other parts of the Province, and in summer selling the logs in Quebec or at some other point out of the Province. The business is that of getting out logs and selling them at a profit. It is apprehended that the business ought to be said to be carried on where the principal office or head office is situate. In *Taylor* v. *The Crowland Gas Co.* 11 Ex. 1, it was held that a Corporation *dwells* where it *carries on its business*. In *Minor* v. *London and North-Western Railway Co.* 1 C. B. N. S. 325, it was held that a Railway Company does *not* carry on its business at a receiving house or booking office kept by an agent. In *Shields* v. *Great Northern Railway Co.* 7 Jur. N. S. 631, it was held that a Railway Company does not carry on business at any place *other* than its principal office at which its business is managed. In *Brown* v. *London and North-Western Railway Co.* 4 B. & S. 326, it was held that this means their *general* business—not where they carry on a part or even a material part of their business. See further, *Adams* v. *Great Western Railway Co.*

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As to partnerships having more than one business locality.

**38.** If a partnership has more than one place of business, (*r*) each branch shall be assessed, as far as may be, in the locality where it is situate, for that portion of the personal property of the partnership which belongs to that particular branch; (*s*) and if this cannot be done, the partnership may elect at which of its places of business it will be assessed for the whole personal property, and shall be required to produce a certificate at each of the other places of business of the amount of personal property assessed against it elsewhere.

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30 L. J. Ex. 124; *Mitchell* v. *Hender*, 18 Jur. 430; *McMahon* v. *Irish North Western Railway Co.* 19 W. R. 212; *Ahrens* v. *McGilligat, The Grand Trunk Railway Company, garnishees*, 23 U. C. C. P. 171. In *Ex parte Charles*, L. R. 13 Eq. 638, where manufacturers of steel and other articles at Sheffield, who rented three rooms in London, two of which were occupied by an agent who kept samples and solicited orders, it was held that the business was carried on at Sheffield and not at London. In *Attorney-General* v. *Sulley*, 4 H. & N. 769, it was held that a member resident in London of a mercantile firm established at New York for the sale of goods, and who made purchases in England for the firm in New York, was liable to income tax, but the decision was afterwards reversed. (5 H. & N. 711.) Cockburn, C. J., in delivering the judgment of the Court of Error, said: "The question is, whether there is a carrying on or exercise of the trade in this country. I think there is not, looking at the sense in which the term is used, and having regard to the subject matter of the statute. Wherever a merchant is established in the course of his operations, his dealings must extend over various places. He buys in one place and sells in another. But he has one *principal* place in which he may be said to trade, viz., *where his profits come home to him.* That is *where* he exercises his trade." (5 H. & N. 717.)

(*r*) See note *q* to sec. 37.

(*s*) The words are that *each* branch shall be assessed, *as far as may be*, in the locality where it is situate, for *that portion* of the personal property of the partnership which belongs to that *particular branch*. The difficulty will be to say, *first*, whether there is a branch; and secondly, what portion of the personal property belongs (or appertains) to that particular branch. Everything will depend upon the nature, character and extent of the business, and the mode in which the same is conducted. In almost every ordinary mercantile business there will be considerable difficulty in applying the section. It is provided that, if this cannot be done, the partnership may elect at which of its places of business it will be assessed for the whole personal property, in which event it shall be so assessed and shall be required to produce a certificate at each place of business of the amount of personal property assessed against it elsewhere. Whether this will apply to a firm having its principal place of business out of the Province, is a question which must rest for the decision of the Courts. (See note *q* to sec. 37.) It has been held that "steamboating" is a species of business which can only be assessed as a whole, where there is but one boat; and that plying between two points in different Counties, such a business is not to be understood

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**39.** Every person having a farm, shop, factory, office or other place of business where he carries on a trade, profession or calling, shall, for all personal property owned by him, wheresoever situate, (*t*) be assessed in the Municipality or Ward where he has such place of business, at the time when the assessment is made. (*tt*)

Where parties carrying on trade, &c., to be assessed for personal property.

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as consisting of several branches within the meaning of this section. (*In re Hatt*, 7 U. C. L. J. 103.) The question was raised whether the owner of a road having toll gates in different Municipalities is a person having different places of business, but no decision was given on the point. (*In re Hepburn and Johnson*, 7 U. C. L. J. 46; see further, note *l* to sec. 8.)

(*t*) It is enacted that every person having—

1. A farm;
2. Shop;
3. Factory;
4. Office;
5. Or *other* place of business,

} *where* he carries on a trade, profession or calling. (See note *r* to sec. 370 of the Municipal Institutions Act.)

*shall*, for all personal property owned by him, *wheresoever situate*, be assessed in the Municipality or Ward where he has such place of business at the time when the assessment is made. A man may have his place of business in one Municipality and reside in another, or in one County and reside in another. So long as resident in the Province, and having only one place of business, there might be no difficulty in assessing him at that place of business for his personal property wheresoever situate within the Province. But if he have personal property *out of the Province* there would be great difficulty in holding that such last-mentioned property should be assessed at his place of business. Such a holding would certainly be contrary to the opinions expressed by the learned Chief Justice who delivered judgment in *Attorney-General* v. *Sulley*, 5 H. & N. 711. (See note *q* to sec. 37; see also *In re Goodhue*, 19 Grant, 366.) In the last-mentioned case, Strong, V. C., intimated that the testator's grandchildren, domiciled without the Province of Ontario, could not be affected by any Act of the Provincial Legislature. In *Duer* v. *Small*, 4 Blatchf. 263, it was held that the statute of a State, providing that persons doing business in the State as merchants, bankers or otherwise, though not *residents* of the State, should be assessed on all sums invested in their business, the same as if they were residents of the State, was constitutional. (See further, note *l* to sec. 8.)

(*tt*) Every person who holds any appointment or office of emolument to which an annual salary, gratuity or other compensation is attached, and performs the duty of such appointment or office within a Municipality in which he does not reside, must be assessed in respect of the amount of such salary, gratuity or compensation at the place where he performs such duties. (37 Vic. cap. 19, sec. 6.) He is not assessable therefor at his place of residence. (*Ib.*) But if required, must produce a certificate of his being otherwise assessed under the provisions of this section. (*Ib.*) This does not apply to County Municipal officers. (*Ib.*) As to the meaning of the words "office" and "officer," see *The King* v. *Bridgewater*, 6 A. & E. 339; *The Queen* v. *The Local Government Board*, L. R. 9 Q. B. 148.

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When the party has two or more places of business.

**40.** If he has two or more such places of business (*u*) in different Municipalities or Wards, he shall be assessed at each for that portion of his personal property connected with the business carried on thereat; (*v*) or if this cannot be done, he shall be assessed for part of his personal property at one and part at another of his places of business, but he shall in all such cases produce a certificate at each place of business of the amount of personal property assessed against him elsewhere.

When the party has no place of business.

**41.** If any person has no place of business, he shall be assessed at his place of residence. (*w*)

Case of executors, &c.

**42.** Personal property in the sole possession or under the sole control of any person as trustee, guardian, executor or administrator, shall be assessed against such person alone. (*x*)

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(*u*) *i. e.*, Farm, shop, factory, office or other place of business. (See sec. 39.)

(*v*) See note *s* to sec. 38.

(*w*) It is by sec. 21, sub. 1, made the duty of an Assessor to set down the names and surnames in full of all taxable persons *resident* in the Municipality who have taxable property therein. But as a person may be taxed at his place of business and yet not be a resident of the Municipality, it follows that sec. 21, sub. 1, must be read as somewhat amplified. (See sec. 39.) Unless, however, the person taxed have either a place of business or a place of residence in the Municipality he cannot be legally placed on the roll. (*Cartwright* v. *Kingston*, 6 U. C. L. J. 189.) Prior sections to this provide for assessment at the place or places of business. Thus, if any person resident in the Municipality have no place of business, he shall be assessed at his place of residence. The word "residence" in different statutes may have different meanings, according to the subject matter and purpose of the statutes. Where the lessees of a road running through the Village of St. Thomas, lived in the Township of Yarmouth, it was held that they could not be assessed in St. Thomas for their interest in the road. (*In re Hepburn and Johnson*, 7 U. C. L. J. 46.) So where the appellant, whose residence was London, though in the Village of St. Thomas at the time of the assessment, was only temporarily there for the purpose of winding up the business of an agency of the Bank of Montreal at that place, it was held that he could not be taxed on his income in St. Thomas. (*In re Ashworth*, 7 U. C. L. J. 47.) So where a farmer, resident of Vienna, having taken a house at Ingersoll, in another Municipality, whither the greater part of his household effects had been removed, and most of his family resided at the time of the assessment, although he temporarily remained and slept in his former domicile during the night, it was held that he could not be legally assessed in Vienna. (*Marr* v. *Vienna*, 10 U. C. L. J. 275; see further, note *d* to sec. 77 of the Municipal Institutions Act; also, note *l* to sec. 8, and note *tt* to sec. 39 of this Act.)

(*x*) Trustees, guardians, executors and administrators are supposed to have the means of reimbursing themselves out of the estate

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Separate assessment of joint owners or possessors.

**43.** In case of personal property owned or possessed by or under the control of more than one person resident in the Municipality or Ward, (*a*) each shall be assessed for his share only; or, if they hold in a representative character, (*b*) then each shall be assessed for an equal portion only. (*c*)

Parties assessed as trustees, &c. to have their representative character attached to their names.

**44.** When a person is assessed as trustee, guardian, executor or administrator, (*d*) he shall be assessed as such, (*e*) with the addition to his name of his representative character, and such assessment shall be carried out in a separate line from his individual assessment, (*f*) and he shall be assessed for the value of the real and personal estate held by him, whether in his individual name or in conjunction with others in such representative character, at the full value thereof, or for the

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moneys paid for taxes. Though described on the roll in their representative capacity, it would seem that they are personally liable for the payment of taxes. "It may, no doubt, operate hardly, but not more so than the seizure of any other person's goods which may happen to be in the possession of the person assessed." (*Per* Robinson, C. J., in *Dennison* v. *Henry*, 17 U. C. Q. B. 276.) So a person appearing upon the books of a bank as the legal holder of its shares is, upon the failure of the bank, held liable for the debts of the bank to the extent of the shares held by him, although he received and holds the shares as collateral security for a loan to a shareholder or otherwise in trust. (See *Crease et al* v. *Babcock et al*, 10 Met. 525; *Grew* v. *Breed et al*, 10 Met. 569; *Adderly* v. *Storm*, 6 Hill, 624; *Rosevelt* v. *Brown*, 11 N. Y. 148; *Re Empire City Bank*, 18 N. Y. 199; *Hale* v. *Walker*, 31 Iowa, 344; 7 Am. Rep. 137.) Personal property of a person not resident within the Province must be assessed in the name of and against any agent, trustee or other person who is in the control or possession thereof, and is to be deemed the individual property of such trustee, agent or other person for all objects within the Assessment Act. (37 Vic. cap. 19, sec. 5.)

(*a*) *Resident*, &c. See note *w* to sec. 41 of this Act.

(*b*) See note *x* to sec. 42 of this Act.

(*c*) This apparently intends the assessment to be separate as to each; each to be assessed for an equal portion *only*. Why this should be so, it is difficult to understand. It may be in ease of the persons assessed. (See note *x* to sec. 42 of this Act.) If all were jointly assessed, then each would be severally as well as jointly liable for the whole amount of the assessment. But where each is only assessed "for a portion," each must be discharged on payment of the taxes for *that* portion.

(*d*) The preceding is the last of the series of sections which relate to the manner of assessing personal property. This and the subsequent sections appear to relate as much to real as to personal property.

(*e*) See note *x* to sec. 42 of this Act.

(*f*) An administrator, though assessed in his own name for real property belonging to the estate, cannot qualify upon it as a member of the Council. (*The Queen ex rel. Stock* v. *Davis*, 3 U. C. L. J. 128.)

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proper proportion thereof, if others resident within the same Municipality be joined with him in such representative character. (*g*)

Particulars respecting real property to be delivered to assessors in writing, by the parties to be assessed.

**45.** It shall be the duty of every person assessable for real or personal property in any local Municipality, (*h*) to give all necessary information to the Assessors, and if required by the Assessor, or by one of the Assessors if there be more than one, he shall deliver to him a statement in writing, signed by such person (or by his agent, if the person himself be absent), containing all the particulars respecting the real or personal property assessable against such person, which are required in the assessment roll; and if any reasonable doubt be entertained by the Assessor of the correctness of any information given by the party applied to, the Assessor shall require from him such written statement. (*i*)

Statements given by parties not binding on assessors.

**46.** No such statement shall bind the Assessor, nor excuse him from making due enquiry to ascertain its correctness; (*k*) and, notwithstanding the statement, the Assessor may assess such person for such amount of real or personal property as he believes to be just and correct, and may omit his name or any property which he claims to own or occupy, if the

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(*g*) It is quite plain from the reading of this section that there ought to be no confusion between the assessment of property belonging to a man in his own right, and that which he holds in a representative capacity. When holding property in the latter capacity, he is to be assessed as such, *and* the assessment is to be carried out separate from his individual assessment. So if others resident within the Municipality be joined with him in such representative character.

(*h*) This would not apply to persons resident out of the Municipality. (See sec. 6, and notes thereto.)

(*i*) The duty is—

1. To give all *necessary* information to the Assessors.
2. (If required by the Assessors or one of them) To deliver a written statement containing *all the particulars* respecting the real and personal property assessable against such person which are required in the assessment roll. (See sec. 21.) And
3. If any *reasonable doubt* be entertained by the Assessor of the correctness of any information given under No. 1, the Assessor *shall* require the written statement. But no such statement is binding on the Assessor. (Sec. 46.)

(*k*) The statement, whether written or verbal, is intended for the information of the Assessor. But he is still bound to make enquiry, or to be otherwise satisfied of its correctness. The receipt of the statement is not intended to be a substitute for but an aid to diligence by the Assessor.

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Assessor has reason to believe that he is not entitled to be placed on the roll or to be assessed for such property. (*l*)

Penalty for not giving statement, or making false statement.

**47.** In case any person fails to deliver to the Assessor the written statement mentioned in the preceding sections when required so to do, or knowingly states anything falsely in the written statement required to be made as aforesaid, (*m*) such person shall, on complaint of the Assessor, and upon conviction before a Justice of the Peace having jurisdiction within the County wherein the Municipality is situate, forfeit and pay a fine of twenty dollars, to be recovered in like manner as other penalties upon summary conviction before a Justice of the Peace.

Assessors to give notice to parties of the value at which their property is assessed.

**48.** Every Assessor, before the completion of his roll, (*n*) shall leave for every party named thereon, resident or domiciled or having a place of business within the Municipality, (*o*) and shall transmit by post to every non-resident who shall have required his name to be entered thereon, and furnished his address to the Clerk, (*p*) a notice of the sum at which his real and personal property has been assessed, according to Schedule B, and shall enter on the roll, opposite the name of

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(*l*) The Assessor is to make such an assessment as he believes to be just and correct. Some men, owning assessable property, may desire to be assessed at too small a sum, in order to escape taxation. Others, having property, but not of sufficient value to qualify them either as Councillors or voters, may desire to be assessed at too large an amount, in order either to be a candidate for office or a duly qualified voter. Others, having no assessable property of any kind, may, for either of the purposes last mentioned, desire to be assessed for property when they ought not to be assessed at all. It is the duty of the Assessor to be astute in preventing erroneous assessments, from whatever cause designed.

(*m*) The penalty of twenty dollars may be enforced in case of—

1. Failure to deliver the *written* statement when required by the Assessor;

2. *Knowingly* stating therein *anything false*.

The written statement is only to be delivered when required by the Assessor. If he have reasonable doubt as to the correctness of verbal information given to him, it is his duty to require the written statement. (See note *i* to sec. 45.) The latter should, of course, be as nearly as possible a true statement. It is intended to be acted upon by the Assessor, and *may* mislead him, to the advantage of the person giving it. Hence the imposition of a penalty for the giving of a *knowingly* false statement.

(*n*) See sec. 49 of this Act.

(*o*) See note *w* to sec. 41 of this Act.

(*p*) See sec. 6 of this Act, and note *g* thereto.

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the party, the time of delivering or transmitting such notice, which entry shall be *prima facie* evidence of such delivery or transmission. (*q*)

When assessment roll to be completed.

**49.** The Assessors shall make and complete their rolls in every year between the first day of February and such day as the Municipal Council may appoint, not later than the fifteenth day of April in Townships and Incorporated Villages, and not later than the first day of May in Cities and Towns, (*r*) and shall attach thereto a certificate signed by them, respectively, and verified upon oath or affirmation in the form following: (*s*) "I do certify that I have set down

Certificate to be attached to roll.

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(*q*) The object of this notice is to enable the person for whom intended, if dissatisfied with the sum at which his real and personal property has been assessed, to appeal therefrom. Considered in this light, it is of great importance that it should be left or transmitted by post (as the case may be), according to the direction of the statute. If neglected, it would seem that the Municipal Corporation would not be in a position to enforce payment of the taxes, either by distress or action. (*London* v. *The Great Western Railway Co.* 16 U. C. Q. B. 500; see further, note *n* to sec. 26 of this Act.)

(*r*) In each year every Assessor must now begin to make his roll not later than the fifteenth day of February, and must complete the same on or before the thirtieth day of April, and on the first day of May must deliver the completed roll to the Clerk of the Municipality, with the certificates and affidavits required by law attached. (37 Vic. cap. 19, sec. 8.) The duty, so far as the Assessors are concerned, to make and complete the rolls by the days fixed for the purpose, is imperative. (See note *h* to sec. 189 of the Municipal Institutions Act.) One reason for it being so in the case of Assessors is, that persons desirous of appealing from their assessments are only allowed fourteen days—not after the return of the roll, but "*after the time fixed for the return of the rolls*,"—to give notice of appeal. (Sec. 60, sub. 1 of this Act.) If an Assessor delay to return his roll for several days after the time fixed for the return of his roll, he abridges by so many days the time allowed by the statute for giving notice of appeal against his assessments. If the delay be the result of *wilful* omission on the part of the Assessor, he is made liable upon conviction—

1. To a *fine* not exceeding $200, and to imprisonment till the fine be paid.
2. Or, to *imprisonment*, as a punishment, in the common gaol, for a period not exceeding six months.
3. Or, to *both* fine and imprisonment, in the discretion of the Court. (See sec. 177 of this Act.)

But if the delay be the result of *other* than wilful omission, still the Assessor is liable to forfeit such sum as the Court shall order and adjudge not exceeding $100. (See sec. 175 of this Act.)

(*s*) The duty of Assessors is not only to return the roll by the time limited for the purpose, but before doing so to attach thereto a certificate signed by them respectively, *and* verified upon oath or

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in the above assessment roll all the real property liable to taxation situate in the Municipality or Ward of (*as the case may be*), and the true actual value thereof in each case, according to the best of my information and judgment; and also that the said assessment roll contains a true statement of the aggregate amount of the personal property, or of the taxable income, of every party named in the said roll; and that I have estimated and set down the same according to the best of my information and belief; and I further certify that I have entered therein the names of all the resident householders, tenants and freeholders, and of all other freeholders who have required their names to be entered thereon, with the true amount of property occupied or owned by each, and that I have not entered the name of any person whom I do not truly believe to be a householder, tenant or freeholder, or the *bonâ fide* occupier or owner of the property set down opposite his name, for his own use and benefit, and that the date of delivery or transmitting the notice required by section forty-eight of the Assessment Act is in every case truly and correctly stated in said roll." (*t*) [And I further certify and swear or affirm (*as the case may be*) that I have not entered the name of any person at too low a rate in order to deprive such person of a vote, or at too high a rate in order to give such person a vote, or for any other reason whatever.] (36 V. c. 2, s. 4.)

Certificate attached to roll.

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affirmation in the form given. (See note *h* to sec. 238 of the Municipal Institutions Act.) The words in brackets were added by an amendment made by the statute 36 Vic. cap. 2, sec. 4. The certificate verified, as the statute directs, is intended to be some security for the faithful performance of their duties by the Assessors. The omission of the certificate, however, will not in any manner affect the validity of the assessment rolls. (See note *n* to sec. 26 of this Act.)

(*t*) The certificate, it will be observed, embraces the following points:

1. That the Assessor set down in the roll *all* the real property liable to taxation situate in the Municipality or Ward (*as the case may be*).
2. That he set down the *true actual value thereof* in each case, according to the best of his information and judgment.
3. That the roll contains a true statement of the *aggregate amount* of the *personal* property, or of the *taxable income*, of *every* party named in the roll.
4. That he has estimated and set down the same according to the best of his information and belief.
5. That he entered therein the names of *all* the resident householders, tenants and freeholders, and of all *other* freeholders



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Assessment rolls to be delivered to clerks of municipalities, &c.

**50.** Every Assessor shall deliver to the Clerk of the Municipality the assessment roll, completed and added up, with the certificates and affidavits attached; (*u*) and the Clerk shall thereupon file the same in his office, and the same shall, at all convenient office hours, be open to the inspection of all the householders, tenants and freeholders resident, owning or in possession of property in the Municipality. (*v*)

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who required their names to be entered thereon, with the true amount of property occupied or owned by *each*.

6. That he has not entered the name of any person whom he did not *truly believe* to be a householder, tenant or freeholder, or the *bona fide* occupier or owner of the property set down opposite his name for his own use and benefit.

7. That the date of delivery or transmitting the notice required by section 48 of the Assessment Act is in every case *true* and *correctly stated* in the roll.

8. That he has not entered the name of any person at too low a rate in order to deprive such person of a vote, or at too high a rate in order to give such person a vote, or for any *other* reason whatever.

See further, sec. 21 and notes thereto.

In the case of *Haslemere* (1 Sommers' Tracts, 374, 1680), it was said that "the making of votes by such means (fraudulent deeds) was a very evil and unlawful thing, and tended to the destruction of the Government and debauching of Parliament," and that "it was senseless to think such practices were part of the constitution of our Government, or to imagine that persons whom we entrust with our lives and fortunes ought to be made and chosen by such evil devices." (See 1 Peckwell, 319.) In England at least two statutes have been passed to prevent the making of conveyances for such purposes. These are the statutes 7 & 8 Will. 3, cap. 25, sec. 7, and 10 Anne, cap. 23. But notwithstanding both these statutes, it was held that a conveyance of land by one vendor to several vendees for a *bona fide* consideration is valid, although the avowed object of the vendor was to multiply votes, and that of the vendees to acquire the right of voting. (*Alexander* v. *Newman*, 2 C. B. 122.) Whether or not there is a fraud in the making of the grant is a question of fact, which must in all cases be decided by the Revising Court. (*Newton* v. *Mobberley*, *Ib.* 203.)

(*u*) It is by the previous section made the duty of Assessors "*to make and complete*" their rolls by a day fixed for the purpose. Here it is made their duty *to deliver* to the Clerk the assessment roll completed and added up, with the certificates and affidavits attached. It is not said by this section within what time the delivery shall be made to the Clerk. But it is now provided that the delivery shall be on the first day of May. (37 Vic. cap. 19, sec. 8; see also, note *r* to sec. 49 of this Act.)

(*v*) One object of the delivery of the roll to the Clerk, so far as this section is concerned, is that the same may be filed and open to the inspection of all the householders and freeholders resident or

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*Court of Revision and Appeal.*

**51.** If the Council of the Municipality (*a*) consists of not owning property in the Municipality. (See *The King* v. *Arnold*, 4 A. & E. 657; *The Queen* v. *Blagge*, 10 Jur. 983.) This is in order to enable the persons designated, to examine the roll, and if not found correct to appeal against the same in the manner directed and within the time limited for the purpose. (Sec. 60.) The Court or a Judge no doubt would, on a proper application, grant a *mandamus* to any householder, tenant or freeholder resident, owning or in possession of property in the Municipality, who, at a proper time and in a proper manner, demanded inspection of the Clerk, but was refused. (See *The King* v. *Newcastle-upon-Tyne*, 2 Stra. 1223; *The King* v. *Babb*, 3 T. R. 579; *The King* v. *Shelley*, *Ib.* 141; *The King* v. *Lucas*, 10 East. 235; *The King* v. *Tower*, 4 M. & S. 162; *The King* v. *Arnold*, 4 A. & E. 657; see also, *Tapping in Mandamus*, 52, 95.) When council consists of five members only.

(*a*) By the B. N. A. Act, sec. 92, sub. 14, the power to make laws in relation to the administration of justice in the Province, including the constitution, maintenance and organization of Provincial Courts, both of civil and criminal jurisdiction, is vested exclusively in the Legislature of the Province. It is competent to the Provincial Legislature to provide for the establishment of inferior Courts, and to invest them with such jurisdiction and powers as may be deemed expedient. (See *Gray* v. *The State*, 2 Harring. (Del.) 76; *Egleston* v. *City Council*, 1 Const. (S. C.) 45.) And this has been so held in the United States, notwithstanding a constitution provisional that the judicial power of the State shall be vested in the District Courts and in Justices of the Peace, or other Courts or officers known to the law. (See *Mayor* v. *Morgan*, 7 Martin, La. N. S. 1; *State* v. *Johnson*, 17 Ark. 407; *Seale* v. *Mitchell*, 5 Cal. 401; *Hickman* v. *O'Neal*, 10 Cal. 292; *Vassault* v. *Austin*, 36 Cal. 691; *Ex parte Stratman*, 39 Cal. 517; *State* v. *Young*, 3 Kansas, 445; *Shafer* v. *Mumma*, 17 Md. 331; *Hutchins* v. *Scott*, 4 Halst. (N. J.) 218, 1827; *Waldo* v. *Wallace*, 12 Ind. 569; *Gulick* v. *New*, 14 Ind. 93; *The State* v. *Maynard*, 14 Ill. 419; *Beesman* v. *Peoria*, 16 Ill. 484; *Meagher* v. *County*, 5 Nev. 244; *Shafer* v. *Mumma*, 17 Md. 331.) But inferior tribunals so constituted are to be restricted to the jurisdiction and to the exercise of the powers expressly given or necessarily implied. (*Zylstra* v. *Charleston*, 1 Bay. 382; *People* v. *Slaughter*, 2 Doug. (Mich.) 334.) The section here annotated makes provision for *a Court of Revision*, so called because it is its duty, on proper application, to revise the assessment rolls in each local Municipality. If the Council consists of not more than five members, *such* members shall be the Court of Revision. If of more than five members, then, by the next section, the Council is to appoint five of its members to be the Court of Revision. The jurisdiction of the Court is, by sec. 58, "to try all complaints in regard to persons wrongfully placed upon or omitted from the roll, *or* assessed at too high or too low a sum." Whatever fairly comes under this language is within the jurisdiction of the Court. (See note *r* to sec. 61; note *i* to sec. 69.) The roll as finally passed by the Court is, except as to cases appealed, and for which special provision is made (sec. 63), to be valid, and bind all parties concerned, notwithstanding any defect or error committed in or with

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more than five members, such five members shall be the Court of Revision for the Municipality.

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regard to the roll. (Sec. 61 of this Act.) It is only, however, to be so held as to matters within the jurisdiction of the Court. If the subject matter of complaint be within the jurisdiction of the Court, the party concerned must appeal to the Court, and has no other remedy. (See *Milward* v. *Caffin*, 2 W. Bl. 1330; *Wilson* v. *Weller*, 1 B. & B. 57; *The King* v. *Hulcott*, 6 T. R. 583; *Commonwealth* v. *Leech*, 44 Pa. St. 332; *In re Canal and Walker Streets*, 12 N. Y. 406; *The King* v. *Mayor of Bridgewater*, 6 A. & E. 339; *Ex parte Lee*, 7 A. & E. 139; *The Queen* v. *Poole*, 7 A. & E. 738; *The Queen* v. *Mayor of Norwich*, 8 A. & E. 633; *The Queen* v. *Lords of the Treasury*, 10 A. & E. 374; *Allen* v. *Sharpe*, 2 Ex. 352; *The Queen* v. *Mayor of Norwich*, 3 Q. B. 285; *Churchwardens of Birmingham* v. *Shaw*, 10 Q. B. 868; *Pedley* v. *Davis*, 10 C. B. N. S. 492; *Scragg* v. *London*, 26 U. C. Q. B. 263; *Niagara Falls Suspension Bridge Co.* v. *Gardner*, 29 U. C. Q. B. 194) The stat. 43 Eliz. cap. 2, sec. 1, enabled the overseers of every parish to raise, weekly or otherwise, by taxation of every *inhabitant*, &c., and of every *occupier* of lands, &c., competent sums of money for and towards the necessary relief of the lame, impotent, old, &c. By sec. 6 an appeal was given to the Court of Sessions in these words: "That if any person or persons shall find themselves grieved *with any sess or tax or other* act done by the said Churchwardens, &c., that then it shall be lawful for the Justices of the Peace, at their General Quarter Sessions, &c., to take order therein as to them shall be thought convenient, and the same to conclude and bind all the parties." In *Milward* v. *Caffin*, 2 W. Bl. 1330, the Court said that all that related to the assessment of land *not* in the occupation of the plaintiff was *coram non judice*, and the determination of the Justices a nullity. This case was upheld in *Fletcher* v. *Wilkins*, 6 East. 285, 286, and *Hurrell* v. *Wink*, 8 Taunt. 369; *The King* v. *Welbank*, 4 M. & S. 222. In *Marshall* v. *Pitman*, 9 Bing. 595, the Court said that if the person aggrieved were an *inhabitant* possessing visible property, he was liable to be placed on the rate, although his ratable property turn out afterwards to amount to nothing; and that his only remedy in such case was an appeal to the Justices. The contrary is the rule if the subject matter of the complaint be one over which the Court has no jurisdiction. (See *Groenvelt* v. *Burwell*, 1 Ld. Ray, 471; *Weaver* v. *Price*, 3 B. & Ad. 409; *Governors of Bristol Poor* v. *Wait*, 1 A. & E. 264; *Charleton* v. *Ahoay*, 11 A. & E. 993; *The Queen* v. *Mayor, &c., of Newbury*, 1 Q. B. 751; *The Queen* v. *Mayor, &c., of Sandwich*, 2 Q. B. 895; s. c. 10 Q. B. 563; *The Queen* v. *Mayor, &c., of Harwich*, 2 Q. B. 909; *The Queen* v. *St. George, Southwark*, 10 Q. B. 852; *The Queen* v. *Mayor, &c., of Lichfield*, 16 Q. B. 781; *The Queen* v. *Glamorganshire Canal Co.* 3 E. & E. 186; *Mersey Docks* v. *Cameron*, 11 H. L. C. 443; *Commissioners of Leith Harbour and Dock* v. *Inspectors of the Poor*, L. R. 1 H. L. Sc. 17; *The Queen* v. *St. Martin's, Leicester*, L. R. 2 Q. B. 493; *Great Western Railway Co.* v. *Rouse*, 15 U. C. Q. B. 168; *London* v. *Great Western Railway Co.* 17 U. C. Q. B. 262; *Shaw* v. *Shaw*, 21 U. C. Q. B. 432; *Shaw* v. *Shaw*, 12 U. C. C. P. 456.) By 43 Geo. 3, cap. 99, the laws relating to the duties under the management of the commissioners for the affairs of taxes were consolidated. It provided for the appointment of assessors, and by sec.

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24 gave an appeal to any person who should think himself "*overcharged* or *overrated* by any assessment or surcharge," &c.; but by secs. 69 and 70 of 43 Geo. 3, cap. 161, the right of appeal was extended to "*any assessment.*" This was held to include the case of a person claiming exemption and otherwise wrongly assessed. (*Allen* v. *Sharpe*, 2 Ex. 352; see further, *Pedley* v. *Davis*, 10 C. B. N. S. 492.) The words used as to the jurisdiction of Courts of Revision in this Act are substantially the same as used in 16 Vic. cap. 182, secs. 26-28. The question was raised at a very early period as to whether persons claiming to be exempt from assessment, or whose assessment was otherwise illegal, were bound to appeal to the Courts of Revision; in other words, whether the Courts of Revision had jurisdiction to try such a subject matter of complaint. In *Great Western Railway Co.* v. *Rouse*, 15 U. C. Q. B. 168, Sir J. B. Robinson said: "The 26th and 28th clauses of cap. 182 (16 Vic.) only make the decision of the Judge of the Court final in regard to such matters as are to be submitted to him—that is, any alleged overcharge or undercharge, or the wrongful insertion of any person's name;" and held that, as the superstructure of a Railway Company was exempt from taxation, the assessment of superstructure was illegal, and neither the Court of Revision nor County Judge had power to adjudicate on such a question. There was no complaint in this case that the name of the Company was "wrongfully inserted on the roll." The complaint was that it was inserted on the roll for property that was exempt from taxation, and the Court held that this was not a case of overcharge within the meaning of the Act. In *London* v. *Great Western Railway Co.* 17 U. C. Q. B. 262, Sir John B. Robinson, referring to *Milward* v. *Coffin*, 2 W. Bl. 1330, and *Charleton* v. *Allway*, 11 A. & E. 993, said that "when that has been assessed which could not be legally assessed, the objection becomes a very different one as to its consequences from that of *a mere overvaluation;*" and Burns, J., referring to *Milward* v. *Coffin*, 2 W. Bl. 1330; *Marshall* v. *Pitman*, 9 Bing. 595; *Governors of Bristol Poor* v. *Wait*, 1 A. & E. 264, was more explicit, and said, "The distinction where it is necessary to appeal, and where the claim may be resisted by action of trespass or replevin, is this: if the power existed *to make the assessment*, then there is a jurisdiction in those doing it, and in *such case* the remedy is by appeal *only*. But if the assessment be *illegal*, then there is no jurisdiction to do it, and in *such case* the person resisting is not compelled to resort to the remedy of appeal, but may resist the illegal exaction. . . . If people were obliged to submit to an arbitrary mode of making the assessment, and so compelled to go to the Court of Revision for redress rather than take the opinion of the Law Courts on the illegal act of the Assessor, it might lead to great inconvenience and hardship, besides holding the door open to injustice being perpetrated by the Assessors; and as the rolls are revised by a Court of Revision formed from members of the Council, they should not adopt an illegal assessment. . . . I do not think the Assessor could drive the defendants to the Court of Revision as a matter of necessity by calling that *land* which was *not land.*" In *Shaw* v. *Shaw*, 21 U. C. Q. B. 432, 437, Sir J. B. Robinson said, "If the property was exempt from assessment by statute, there was no necessity for going to the Court of Revision in order to have their decision on the point, as the cases of *Milward* v. *Coffin*, 2 W. Bl. 1330, and *Charleton* v.

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*Alway*, 11 A. & E. 993, fully establish." In *Shaw* v. *Shaw*, 12 U. C. C. P. 456, 459, Mr. Justice Morrison, then a Judge of that Court, in giving judgment said, "The property in question (property in the occupation of the Crown) *not* being taxable property, was wrongly inserted on the roll, and being specifically exempt by the statute from taxation, the unauthorized assessment of it could not render it liable to taxation, or *give jurisdiction to the Court of Revision*. It was a mere nullity, &c. . . . There is nothing in the statute to show, or which can be construed as showing, that property so exempt should become liable to taxation from the fact of the Assessor assessing the property or inserting it on the roll." Up to this point both the Common Law Courts held that property exempt from taxation could not be taxed, and that neither the Court of Revision nor the County Judge had power under the words used in the Act to adjudicate on such a question. But in *Toronto* v. *Great Western Railway Co.* 25 U. C. Q. B. 570, where the question sought to be brought before the Court was as to the effect of the Court of Revision and County Judge upholding an assessment of the superstructure of a railway, which by law is exempt from taxation, Draper, C. J., said, "As to the question itself, as at present advised, we do not think it would be found to present any great difficulty. If the Assessors had put the two annual values (the roadway and superstructure were separately assessed) as forming the whole valuation of the land, though there *might* have been an appeal to the County Judge on the question of *excessive valuation*, and he must have confirmed or reduced it, we do not see how, under the statute, his decision could have been brought in question. This was certainly, so far as the case can be taken as a decision of any kind, a decision at variance with *London* v. *Great Western Railway Co.* 17 U. C. Q. B. 262, where Burns, J., said, in a similar case, "I do not think the Assessor could drive the defendant to the Court of Revision by calling that land which was not land," &c., and the cases following it, including *Shaw* v. *Shaw*, 12 U. C. C. P. 458. Mr. Justice Morrison, who delivered the judgment of the Court of Common Pleas in *Shaw* v. *Shaw*, was a member of the Queen's Bench when *Toronto* v. *Great Western Railway Co.* was decided, but was absent, and so took no part in the judgment. This case was in *Scragg* v. *London*, 26 U. C. Q. B. 263, treated as a decision overruling all the prior cases. One of the questions raised in *Scragg* v. *London* was, whether the decision of the Court of Revision (on a claim of exemption from taxation) was final—no appeal having been lodged to the County Judge. Hagarty, J., who delivered the judgment of the Court, after a review of most of the cases, and quoting sec. 60 of the then statute (same as sec. 59 of the present statute), said: "It is perhaps not easy to see how these words do not cover the whole ground—namely, the wrongful *insertion of a name*, and *undercharge* or *overcharge*. The man who has nothing but property not assessable is *wrongfully on the roll*. According to these decisions (*London* v. *Great Western Railway Co.*) he need not appeal, or if he do, is not bound by the judgment of the Court of Revision or County Judge. We think, on the whole, we should follow the latest decision of this Court (*Toronto* v. *Great Western Railway Co.* 25 U.C.Q.B. 570), *as it accords with our individual views*," &c. Draper, C. J., concurred. Morrison, J., who delivered a judgment in the case on another point, apparently abstained from in any manner referring to the point. Whether he

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When more than five.

**52.** If the Council consists of more than five members, such Council shall appoint five of its members to be the Court of Revision. (*b*)

A quorum.

**53.** Three members of the Court of Revision shall be a quorum, and a majority of a quorum may decide all questions before the Court. (*c*)

Who to be clerk.

**54.** The Clerk of the Municipality shall be Clerk of the Court, and shall record the proceedings thereof. (*d*)

Meetings of Court.

**55.** The Court may meet and adjourn from time to time at pleasure, or may be summoned to meet at any time by the head of the Municipality. (*e*)

May administer oaths, &c.

**56.** The Court, or some member thereof, shall administer an oath to any party or witness before his evidence can be taken, and may issue a summons to any witness to attend such Court. (*f*)

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concurred or not, the decision must be taken, so far as the Queen's Bench is concerned, as deliberately overruling all the prior decisions of that Court at variance with it. The Common Pleas, as yet, has not been called upon to say whether it will reverse its decision in *Shaw* v. *Shaw*, 12 U. C. C. P. 456. *Scragg* v. *London* was appealed to the Court of Appeal, and though the point was one of the grounds of appeal, and argued in the Court of Appeal in the hope that that Court would settle the law on this very important point, yet the following is the only note either of the argument or the judgment of the Court on the point: "It was contended also that the decision of the Court of Revision was final, as determined by the Court below; but the argument on this point is omitted, as the judgment proceeds upon the *other* ground *only*." (*Scragg* v. *London*, 28 U. C. Q. B. 459; see further, note *r* to sec. 61, and note *i* to sec. 69.) *Scragg* v. *London*, 26 U. C. Q. B. 263, was affirmed by Wilson, J., in *Niagara Falls Suspension Bridge Co.* v. *Gardener*, 29 U. C. Q. B. 194, 201; see also, *Allen* v. *Sharp*, 2 Ex. 352, and *Pedley* v. *Davis*, 10 C. B. N. S. 492.

(*b*) *Court of Revision.*—See note *a* to sec. 51 of this Act.

(*c*) *Quorum.*—See note *g* to sec. 120 of Municipal Institutions Act.

(*d*) *Record of the proceedings thereof*, &c.—See sec. 185 of Municipal Institutions Act, and notes thereto.

(*e*) Every member of the Court, before entering upon his duties, must take and subscribe before the Clerk of the Municipality the following oath (or affirmation in cases where by law affirmation is allowed): "I ——— do solemnly swear or affirm that I will to the best of my judgment and ability, and without fear, favour or partiality, honestly decide the appeals to the Court of Revision which shall be brought before me for trial as a member of said Court." (37 Vic. cap. 19, sec. 9.)

(*f*) No witness can be compelled to attend till paid or tendered compensation at the rate of fifty cents a day. (Sec. 57 of this Act.

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Penalty on witnesses who refuse to attend.

**57.** If any witness summoned to attend the Court of Revision as a witness, fail without good and sufficient reason to attend (having been tendered compensation for his time at the rate of fifty cents a day), he shall incur a penalty of twenty dollars, to be recoverable with costs, by and to the use of any person suing for the same, either by suit in the proper Division Court or in any way in which penalties incurred under any By-law of the Municipality may be recovered. (*g*) (37 V. c. 19, s. 10.)

The court to try all complaints, &c.

**58.** At the times or time appointed, (*gg*) the Court shall meet and try all complaints (*h*) in regard to persons

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(*g*) The duty of a witness when summoned is to attend Court. But that duty is not made compulsory unless when summoned he be paid at the rate of fifty cents a day. This is intended as compensation for his time. When this has been paid or tendered, the witness is bound to attend, or submit to a penalty "not exceeding twenty dollars."

(*gg*) The first sittings of the Court cannot be legally held until after the expiration of at least ten days from the expiry of the time within which notice of appeals may be given to the Clerk of the Municipality. (37 Vic. cap. 19, sec. 11.)

(*h*) It is the duty of the Court to meet and *try* all complaints, &c. The person who gives a notice of his intention to appeal is not bound to follow it up. Should he, before the day for the trial, abandon his notice, the appeal would drop. In *The Queen* v. *Stoke Bliss*, 6 Q. B. 158, on an appeal from an order of Justices to the Sessions, the appellant served a notice of countermand, but the Court, notwithstanding, made an order confirming the order of the Justices, with costs. It was held that the Court had no jurisdiction to do so. And *per* Patteson, J.: "It is unfortunate that the Sessions proceeded in this manner. The order states that, no one appearing to prosecute the appeal, they confirm the order of removal. That, they had no jurisdiction to do; and we cannot separate the order for costs from the order of confirmation," &c. But by this statute it is declared that "if *either* party fails to appear in person or by an agent, the Court *may* proceed *ex parte*." (Sub. 14 of sec. 60 of this Act.) If the appellant appear to prosecute his appeal, and show himself to be in a position to do so, it is the duty of the Court to try it. But the Court, before proceeding *ex parte* against the persons to whom the notice was given, must be satisfied that due notice—that is to say, at least six days' notice—had, before the Court, been given to such parties. (*Per* Morrison, J., in *The Queen* v. *Cornwall*, 25 U. C. Q. B. 292.) The appearance of the parties by their counsel for the purpose of objecting to the notice is no waiver of it. (*Ib.*) In the event of the Court refusing to hear a complaint when it ought to do so, a *mandamus* might be obtained to compel them to do. (*The King* v. *Justices of Kent*, 9 B. &. C. 283.) In this case, on the appearance of the appellant, a resolution was moved, seconded and carried, to the effect that no further notice should be taken of his application for relief. The Court held that there had not been any decision. (*Ib.*) And *per*

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Lord Tenterden, C. J.: "In this case a rate was made, and a sum of money ordered to be paid out of that rate to Suter. Ritchie (the appellant) objected to such payment, and applied for relief under the sixty-third section to the Churchwardens, &c. They resolved that they would take no notice of his application for relief. They refused, in fact, to hear the appeal at all. The proper course under these circumstances would have been to have applied to this Court for a *mandamus* to compel them to hear this appeal." (p. 287.) It is the duty of the Court, when a person appeals against an assessment, and appears to support his appeal, to decide the complaint either one way or the other. (*The Law Society of Upper Canada* v. *Toronto*, 25 U. C. Q. B. 199.) Abstaining from decision is no determination of the matter of appeal. (*Per* Draper, C. J., *Ib.*) The person appealing is entitled to a decision on his appeal before he can be made liable to pay any taxes in respect of the assessment against which he appeals. Until decided, the assessment is, as it were, withdrawn from the assessment roll. (*Ib. per* Morrison, J., p. 207.) Some *act* of the Court would, it seems, be necessary before a decision could be said to be given. (*Ib.*) *In re Judge of Perth and J. L. Robinson*, 12 U. C. C. P. 252, where, on an application claiming a reduction of assessment, the Court of Revision adopted a resolution "That the application of James Lukin Robinson for a reduction of his taxes on the assessment be dismissed, as this Council is of opinion that the lands of complainant have not been assessed higher in any case than lands similarly situated of residents of the Municipality," it was held that this resolution was a sufficient act done as to amount to a decision. And *per* Draper, C. J.: "I think it would amount to an entire defeating of the statute, and a denial of the relief it was intended to afford, if, by refusing to entertain the petition altogether, they could prevent the complaint being heard. As at present advised, I should treat *such* a refusal as a decision against the petitioner. In substance it certainly is so, only it may be said to be a decision without trying the case. In the present instance, the Council have, I think, by the very terms of their resolution, shown that they have tried the matter, though they have done so without hearing the complainant further than by reading the statements of his petition. They have dismissed the petition 'because his lands have not been assessed higher in any case than lands similarly situated of residents of the Municipality.' This is really a decision of the complaint, and imports an examination *into the merits*. They profess to have ascertained a fact which, in their judgment, disentitles the applicant to relief under the Act." (*Ib.* 252.) In *The King* v. *Tucker*, 3 B. & C. 544, the dismissal of a complaint, on the mistaken ground that the Court had not jurisdiction to hear it, was, under the peculiar provisions of 3 Geo. 4, cap. 33, sec. 2, considered such an act done by the Court as to give a right to appeal. And *per* Abbott, C. J.: "The application must be made within a certain time, notices are to be given, and the Petty Sessions must be held within thirty days. The party, therefore, cannot *renew* his application for relief if the complaint is dismissed, nor can this Court issue a *mandamus* to the special Petty Sessions. The question then is, whether a dismissal of the complaint, not on the merits, but on a mistaken notion of law, is not, *under such circumstances*, to be considered as an act done against which an appeal lies by the seventh section of the Act. I think that it is, but my opinion is founded on the peculiar provisions and language of the Act, and must not be

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wrongfully placed upon or omitted from the roll, or assessed at too high or too low a sum. (*i*)

The court to finish its business by June 15th.

**59.** All the duties of the Court of Revision, which relate to the matters aforesaid, (*k*) shall be completed, and the rolls finally revised by the Court, before the fifteenth day of June in every year. (*l*)

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considered as a precedent in any other case." (*Ib.* 547.) See further, note *l* to sec. 59 of this Act.

(*i*) The statutory jurisdiction of the Court is here conferred. The Court cannot exceed it. It is one with a limited authority created for particular purposes, viz., to try all complaints in regard to persons—

1. Wrongfully placed on the roll.
2. Unlawfully omitted from the roll.
3. Assessed at too high a sum.
4. Assessed at too low a sum.

See note *a* to sec. 51 as to the nature and extent of the jurisdiction.

(*k*) See note *i* to sec. 58 of this Act.

(*l*) So far as the Court is concerned, this section would appear to be imperative. But so far as the public is concerned, it may be held to be only directory. (See note *h* to sec. 189 of the Municipal Institutions Act.) Where an act is required to be done for the public good, and there has been a wrongful omission to do it, and a serious inconvenience will arise from its not being done, a Superior Court of law has the power of ordering it to be done under the prerogative writ of *mandamus*. (*Per* Lord Campbell, C. J., in *The Queen* v. *Rochester*, 7 E. & B. 924.) Of this we have a well-known instance in *The King* v. *Sparrow*, 2 Str. 1123, where Overseers of the Poor not having been appointed for a parish as the statute requires, "in Easter week or within one month after Easter," a *mandamus* was granted after the expiration of that time to Justices to appoint Overseers for that Parish, and the appointment having been made was solemnly adjudged to be valid. This decision has been frequently recognized and acted upon. There can be no doubt that for the public good, and to effectuate the intention of the Legislature, the revision of the list (though the fifteen day of June have passed without it), if practicable, ought still to take place. (*Ib.*) The proper course would probably be to apply for a *mandamus* to the head of the Council to summon the Court to meet, under the authority given him by sec. 55, with a view to hear and determine the matters complained of, due notices being first given to the respective parties. (*Per* Morrison, J., in *The Queen* v. *Cornwall*, 25 U. C. Q. B. 292.) Possibly the writ might be directed to the Court, or members composing it; for though not a Corporation, they constitute, as it were, a standing and perpetual tribunal within the Municipality. (*Per* Lord Campbell, C. J., in *The Queen* v. *Rochester*, 7 E. & B. 925.) The Court may, at its option, after the 15th of June, receive and decide upon the petition from any person assessed for a tenement which has remained vacant during more than three months in the year for which the assessment has been made, or from any

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**60.** The proceedings for the trial of complaints shall be as follows: (*a*)

Proceedings on trial of complaints.

(1.) Any person complaining of an error or omission in regard to himself, as having been wrongfully inserted on or omitted from the roll, or as having been undercharged or overcharged by the Assessor in the roll, may, personally or by his agent, within fourteen days after the time fixed for the return of the roll, give notice in writing to the Clerk of the Municipality, that he considers himself aggrieved for any or all of the causes aforesaid. (*b*)

Notice of complaint by party aggrieved.

(2.) If a Municipal elector thinks that any person has been assessed too low or too high, or has been wrongfully

When an elector thinks any person assessed at too low or too high a rate.

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person who declares himself, from sickness or extreme poverty, unable to pay the taxes, or who, by reason of any gross and manifest error in the roll as finally passed by the Court, has been overcharged more than twenty-five per cent. on the sum he ought to be charged. (Sec. 62.)

(*a*) See note *h* to sec. 58.

(*b*) Every Assessor, before the completion of his roll, and therefore before the return of it, must leave for every party named therein, and resident or domiciled or having a place of business within the Municipality, and transmit by post to every non-resident who shall have requested his name to be entered thereon and furnished his address to the Assessor, a notice of the sum at which his real and personal property has been assessed. (Sec. 48.) If, upon inspection of it, the person assessed finds, in regard to himself, an error or omission of the description mentioned in this subsection, he must, within fourteen days after the time fixed for the return of the roll give notice thereof in writing to the Clerk of the Municipality, that he considers himself aggrieved for any or all of the causes mentioned in this subsection. This notice is to be given within fourteen days after the first day of May, required for the return of the roll, or within fourteen days after the return of the roll, in case the same is not returned within the time fixed for that purpose. (37 Vic. cap. 19, sec. 12.) If the notice required by sec. 48 has not been served, the assessment might be held invalid. (*London* v. *Great Western Railway Co.* 16 U. C. Q. B. 500.) But if the notice be served, and the party either omit to appeal within the time herein limited, or wholly omit to do so, the assessment would bind him. (*McCarrall* v. *Watkins*, 19 U. C. Q. B. 248.) In the case of palpable errors needing correction, the Court may extend the time for making the complaints ten days further. (Sub. 4 of this section.) The Court may, as mentioned in the note to the preceding section, without notice, receive and decide upon the petition from any person assessed for a tenement which has remained vacant during more than three months in the year for which the assessment has been made; or from any person who declares himself, from sickness or extreme poverty, unable to pay his taxes, or who, by reason of any gross and manifest error in the roll, has been overcharged more than twenty-five per cent. on the sum he ought to be charged. (Sec. 62; see further, as to the general jurisdiction of Courts of Revision, note *a* to sec. 51.)

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inserted on or omitted from the roll, the Clerk shall, on his request in writing, give notice to such person and to the Assessor, of the time when the matter will be tried by the Court, and the matter shall be decided in the same manner as complaints by a person assessed. (*c*)

Clerk to give notice by posting up list.

(3.) The Clerk of the Court shall post up in some convenient and public place within the Municipality or Ward, a list of all complainants on their own behalf against the Assessor's return, and of all complainants on account of the assessment of other persons, stating the names of each, with a concise description of the matter complained against, together with an announcement of the time when the Court will be held to hear the complaints, (*d*) but no alteration

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(*c*) Persons assessed may not only, under the preceding subsection, complain of errors or omissions in regard to themselves, but, under this subsection, any Municipal elector, thinking that any person has been assessed too high or too low, may make a complaint, in which event he, the complainant, should, in writing, request the Clerk to notify the person complained against, and the Assessor, of the time when the matter will be tried by the Court, and it will be the duty of the Clerk to do as requested. The notice must be within fourteen days after the first day of May, required for the return of the roll, or within fourteen days after the return of the roll, in case the same is not returned within the time fixed for the purpose. (37 Vic. cap. 19, sec. 12.) In England it has been held that if a burgess has been struck off the roll on the application of another burgess, the latter has sufficient interest in the matter to entitle him to appear on a rule for a *mandamus*, though the official defendant does not; and it is proper, though perhaps not imperative, to serve a copy of the rule on such objector. (*The Queen* v. *Mayor of Exeter*, 19 L. T. N. S. 432.) The Court will not grant a *mandamus* to rectify such a roll by the insertion therein of the name of the person omitted for non-residence, unless it be made clearly to appear that he does so substantially and *bona fide* reside within the borough as to make his omission therefrom unreasonable. (*Ib.*)

(*d*) The list should give:

1. The names of all complainants on their *own behalf*, against the Assessor's return.
2. The names of all complainants on account of the assessment of *others*.
3. A concise description of the matter complained against.

*Together* with an announcement of the time when the Court will be held to hear the complaints. (See sub. 5 as to form of list.) It is also the duty of the Clerk to advertise in a newspaper the time at which the Court will hold its first sitting (sub. 6), and cause to be left at the residence of the Assessor a list of all the complaints respecting his roll (sub. 7), and notify each person in respect of whom a complaint has been made (subs. 7-10), all of which must be at least six days before the sitting of the Court. (Sub. 11.) When necessary, the Clerk may, at the cost of the Municipality, call to his aid such assistance as may be required to effect the services which he

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shall be made in the roll, unless under a complaint formally made according to the above provisions. (*e*)

(4.) When it shall appear that there are palpable errors which need correction, the Court may extend the time for making complaints ten days further, (*f*) and may then meet and determine the additional matter complained of, and the Assessor may for such purpose be the complainant. Extension of time for complaints.

(5.) Such list may be in the following form: (*g*)

Appeals to be heard at the Court of Revision, to be held at on the day of 18 . Form of notice list.

| APPELLANT. | RESPECTING WHOM. | MATTER COMPLAINED OF. |
|---|---|---|
| A. B. ..... | Self. ..... | Overcharged on land. |
| C. D. ..... | E. F. ..... | Name omitted. |
| G. H. ..... | J. K. ..... | Not *bona fide* owner or occupant. |
| L. M. ..... | N. O. ..... | Personal property undercharged. |
| Etc., etc. | | |

(6.) The Clerk shall also advertise in some newspaper published in the Municipality, or if there be no such paper, then in some newspaper published in the nearest Municipality in which one is published, (*h*) the time at which the Court will hold its first sittings for the year. The clerk to advertise sittings of court.

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is required by law to make (37 Vic. cap. 19, sec. 13); and in the event of his failure to effect any such services in time for the first sitting of the Court, the Court in its discretion may appoint an adjourned sitting for the purpose of hearing the appeals for which the services were not effected in time for the first day, and the proper services shall be made for such adjourned day. (*Ib.*)

(*e*) Any alteration made otherwise than under a complaint, according to law, would be as no alteration, and so not to be regarded.

(*f*) Ordinary complaints should be made "within fourteen days after the time fixed for the return of the roll." (Sub. 1.) But as regards "*palpable* errors which *need* correction," the Court may, under this subsection, extend the time ten days further. "Palpable" strictly means perceptible by the touch—something that may be felt. But, according to the general understanding, it means something easily perceived and detected—something so plain that, as it were, the perception of it immediately produces detection. If such errors appear, and are deemed of sufficient importance to be corrected, there may be an extension of time for making complaints in reference to them.

(*g*) The Clerk must enter the appeals on the list in the order in which they are received by him (37 Vic. cap. 19, sec. 14), and the Court must proceed with the appeals in the order, as near as may be, in which they are so entered, but may grant an adjournment or postponement of any appeal. (*Ib.*)

(*h*) The notice which the Clerk is, under this subsection, required to publish, must be published at least ten days before the sitting of the Court. (37 Vic. cap. 19, sec. 11.)

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To leave a list with assessor,

(7.) The Clerk shall also cause to be left at the residence of each Assessor, a list of all the complaints respecting his roll. (*i*)

and prepare notice to person complained against. Form.

(8.) The Clerk shall prepare a notice in the form following, (*k*) for each person with respect to whom a complaint has been made: "Take notice, that you are required to attend the Court of Revision at on the day of in the matter of the following appeal:

"Appellant: G. H.

"Subject—That you are not a *bona fide* owner or occupant (*or as the case may be*)."

(Signed) "X. Y.

"To J. K." "Clerk."

Service to be at residence.

(9.) If the person resides or has a place of business in the local Municipality, the Clerk shall cause the notice to be left at the person's residence or place of business. (*l*)

How absentees served.

(10.) If the person be not known, then to be left with some grown person on the assessed premises, if there be any

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(*i*) This is directed to be done in order to apprize the Assessor of the cause of complaint, so that he may attend and, if deemed proper, support the roll. When necessary, the Clerk of the Municipality may, at the cost of the Municipality, call to his aid such assistance as may be required to effect the services which he is required by law to make. (37 Vic. cap. 19, sec. 13.)

(*k*) See note *h* to sec. 238 of the Municipal Institutions Act. It should be a six days' notice. (See note *n*, *infra*.)

(*l*) The preparation of the notice directed by the preceding subsection would be of little worth, unless the notice, when prepared, were in some way or other communicated to the person concerned. If the person intended to be notified reside or have a place of business in the Municipality, it will be sufficient if the notice be left at his residence or place of business. If a non-resident, it will be sufficient to address the notice to him through the post office. (Sub. 10.) If not known, the notice may be left with some grown person on the assessed premises. (Sub. 10.) Service at the dwelling house is sufficient. (*The Queen* v. *Justices of North Riding of Yorkshire* 7 Q. B. 154; see also, *The Queen* v. *Justices of Cheshire*, 11 A. & E. 139. It is doubtful if service on a Sunday would be sufficient. (*The Queen* v. *Leominster*, 2 B. & S. 391.) If the last day for service fall on Sunday, service would certainly not be sufficient. (*The Queen* v. *Justices of Middlesex*, 2 Dowl. N. S. 719; *Asprell* v. *Justices of Lancaster*, 16 Jur. 1067; *Peacock* v. *The Queen*, 4 C. B. N. S. 264; *Wynne* v. *Ronaldson*, 13 W. R. 849.) But if allowed to be sent by post, it would seem that the arrival of the notice on Sunday would not invalidate the service. (*The Queen* v. *Leominster*, 2 B. & S. 391.) Further, as to "place of business" and "place of residence," see secs. 37 and 41 of this Act, and notes thereto.

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such person there resident; or if the person be not resident in the Municipality, then the notice to be addressed to such person through the post office. (*m*)

When notice to be completed.

(11) Every notice hereby required, whether by publication, advertisement, letter or otherwise, shall be completed at least six days before the sittings of the Court. (*n*)

Proceedings when party assessed complains of overcharge on personal property, &c.

(12) If the party assessed complains of an overcharge (*o*)

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(*m*) If the person be resident *within* the Municipality, though not known, notice may be left with some grown-up person on the assessed premises. But if *without* the Municipality, then the notice must be addressed to him through the post office. (See note *g* to sec. 6.)

(*n*) An elector served the Clerk of the Municipality with notice that several persons had been wrongfully inserted on the roll, and others omitted or assessed too high or too low, and requesting the Clerk to notify them and the Assessor when the matter would be tried by the Court of Revision. On 22nd of May the Court met, when it was objected, on behalf of the parties named in the notice, that only *five* days' notice had been given. The Court then adjourned until 30th of May, directing proper notice to be given. But the Clerk omitted to give the notice. The Court, in consequence, on 30th of May refused to hear the appeal, and finally passed the roll. Held, that the decision of the Court was not erroneous. (*The Queen* v. *Court of Revision of Cornwall*, 25 U. C. Q. B. 286.) Held also, that the appearance of the parties, by their counsel, for the purpose of objecting to the sufficiency of the notice, was no waiver of it. (*Ib.*) And *per* Morrison, J.: "Upon an examination of subsections 2, 7, 8 and 10 of sec. 60, which bear on this application, we find that they are all imperative by force of the Interpretation Act, and when we consider the object of the complaints made by the relator, we cannot overlook the plain words of the statute. The Legislature clearly intended that in all cases of objection by third parties, a notice of complaint must be given to the party complained against *at least* six days before the sitting of the Court at which it is to be heard, and that such notices should be prepared and given in due time by the Clerk. . . . The language of the Act is plain and unambiguous. If the mode of proceeding provided by the statute is insufficient, inconvenient or open to abuse, the remedy is with the Legislature. For this Court to say that five days' notice or any less number is sufficient, would be to assume a legislative authority." (See note *g* to sec. 105 of Municipal Institutions Act.)

(*o*) Net personal property is personal property, less certain debts. (Note *x* to sub. 20 of sec. 9.) No one is to be assessed for a less sum as the amount of his personal property than the amount of his income during the past year, and this without deduction by reason of any indebtedness, "save such as shall equal the annual interest thereof." (Sec. 35.) The value of personal property, less such debts as may be deducted, or amount of income without deduction for debts, if the assessment be disputed, is *prima facie* determined by the declaration of the party complaining. If the Court be not satisfied with the declaration, it may proceed to take evidence and "confirm, alter or amend the roll as *the evidence* shall seem to warrant." Formerly the declaration was *conclusive evidence.*

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on his personal property or taxable income, he or his agent may appear before the Court and make a declaration, in case the complainant appears in person in the form in Schedule D, E or F, to this Act, according to the fact, and if the complainant appears by agent, such agent may make the declaration in the form in Schedule G, H or I, as the case may be; (*o*) and no abatement shall be made from the amount of income on account of debts due, nor from the value of personal property other than income in respect of debts, except debts due for or on account of such personal property, and the Court shall thereupon enter the person assessed at such an amount of personal property or taxable income as is specified in such declaration, unless such Court shall be dissatisfied with the declaration, in which case the party making the declaration, and any witnesses whom it may be desirable to examine, may be examined on oath by such Court respecting the correctness of such declaration, and such Court shall confirm, alter or amend the roll as the evidence shall seem to warrant.

Effect of declaration by each party.

Proceedings in other cases.

(13.) In other cases, the Court, after hearing upon oath the complainant and the Assessor or Assessors, and any witness adduced, and if deemed desirable the party complained against, shall determine the matter, and confirm or amend the roll accordingly. (*p*)

When to proceed *ex parte*.

(14.) If either party fails to appear, either in person or by an agent, the Court may proceed *ex parte*. (*q*)

The roll as finally passed to bind all parties.

**61.** The roll, as finally passed by the Court, and certified by the Clerk as so passed, shall be valid and bind all parties concerned, notwithstanding any defect or error committed in or with regard to such roll, (*r*) except in so far as the same

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(*p*) It is not necessary to hear upon oath the complainant or Assessor or the party complained against, unless where the Court deems it necessary or proper, or the evidence of the party is tendered on his own behalf or required by the opposite party. (37 Vic. cap. 19, sec. 15.)

(*q*) It should be the duty of the Court, before proceeding *ex parte* under this section, to ascertain whether or not due notice has been given to the respective parties. (See note *h* to sec. 58.)

(*r*) In *Earl of Radnor* v. *Reeve*, 2 B. & P. 391, 392, the Court said that "it had been determined by all the Judges of England that when a statute provides that the judgment of Commissioners appointed thereby shall be final, their decision is conclusive, and cannot be questioned in any collateral way." In *Berlin* v. *Grange*, 1 E. & A. 235, Robinson, C. J., said: "When the statute provides that after the roll has been finally passed by the Court of Revision, it shall bind all

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parties concerned, notwithstanding any defect or error committed in or with regard to such roll, that cannot, I think, be taken to mean that it shall be binding on a party whose name there never was *any legal authority* for introducing upon the roll at all, because there the very foundation of assessment against *the party* is wanting." In *Birmingham Churchwardens* v. *Shaw*, 10 Q. B. 868, the English Court of Queen's Bench held that a person *exempt* from poor rate as the occupier of premises belonging to a scientific or literary Society, must, if assessed for such premises, contest the liability before the inferior Court constituted for the purpose, to whom the appeal is directed to be made by persons complaining of being wrongfully assessed. Lord Denman, in giving judgment, said: "We are driven, therefore, to consider the second ground on which the rule is supported, whether, namely, as regards the present rates, the Society is deprived of the benefit of its exemption because it has not appealed against them. And as it cannot be successfully contended that the President might not have appealed, the question is narrowed to this: whether, there being a remedy by appeal, and that remedy passed by, the law will allow an action to be brought for the enforcement of a rate good on its face, and made by a competent authority, on a person and in respect of the occupation of property apparently within the jurisdiction of that authority. This is not a new question. Nor is the principle of decision unsettled or difficult. The only difficulty lies in its application. The right of appeal is co-extensive with the operation of the rate. Whether it has defects which make it even a nullity in law, or be objectionable only as excessive in amount, or unequal in its assessment, any one who is grieved by it may appeal. But the right of action is limited, as well for the sake of convenience as on principles of law and justice. The making and allowance of the rate are acts entrusted by the law to certain functionaries, the overseers and the justices; and the exercise of their functions is subjected by the law to revision by a Court of Appeal. If in the exercise of their functions, *but acting within their jurisdiction*, they do an erroneous act, it is no more null and void, while unquestioned by appeal, than an erroneous decision of this Court on a matter within its jurisdiction, while unquestioned by a writ of error. If it be appealed against, the law has made the decision of the Court of Appeal final; and if that Court confirmed the act of the inferior functionaries, however confessedly erroneous that decision might be, it would be conclusive for all purposes, and, among others, for enforcement; else this absurdity would follow, that a rate which the Court of direct and final jurisdiction had pronounced valid, must be considered as invalid when considered collaterally in any other Court as the protecting authority for the officer of the law who was directed to enforce it. And to this extent there can be no difference between the case of a rate not appealed against and one appealed against and confirmed. The authority of the original Court, up to the time of appeal and subject to that, is exactly of the same force as that of the Court of Appeal. Both stand on exactly the same principles. They are the acts and decisions of functionaries or Courts entrusted by the law on matters within their jurisdiction. But all this depends on that limitation of jurisdiction. If in the first instance the primary Court has gone beyond those limits, its act is void. The party grieved may, if he please, appeal, because the statute enables him to



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do so, and excess of jurisdiction is in itself a ground of appeal as much as merely erroneous decision. And if the Court of Appeal erroneously confirms the act of the Court below, it may be that the party appealing cannot object to the want of jurisdiction in any collateral proceeding; his own act may estop him personally. But in the case supposed he is not bound to appeal, because he is at liberty to treat the act as void." (*Ib.* 878.) The reasoning of this case was approved, adopted and applied by the Court of Common Bench in *Pedley* v. *Davis et al*, 10 C. B. N. S. 492, 512. The question, then, according to this reasoning, is, whether the act of the Assessors in assessing the person complaining was an act within their jurisdiction. If within their jurisdiction, the act remains, unless disallowed by the Court of Revision or on appeal to the County Judge. If not within the jurisdiction, the act is null and void, and no act of the Court of Revision or the County Judge can give it validity. (See note *a* to sec. 51.) In *Allen* v. *Sharp*, 2 Ex. 352, it was held that the decision of the Assessor under 43 Geo. 3, cap. 99, sec. 24, and 43 Geo. 3, cap. 161, secs. 69, 70, to the effect that a person was "a horse dealer," was conclusive, unless appealed against in the manner prescribed by the statute. Parke, B., said: "On a careful consideration of these Acts of Parliament, they seem to me to differ from the 42 Eliz. cap. 2, as to the Poor Rate, and that the Legislature intended that *the assessment* of the Assessors appointed by the Commissioners should be final and conclusive, unless appealed from in the first place to the Commissioners, and further, if necessary, to the Judges of the Superior Courts. . . . Without referring to the statutes, I should say, *a priori*, that the object of the Legislature was to make the decision of the Assessor final and binding, unless disputed in the manner pointed out. On reading the statutes I come to the same conclusion. . . . . Let us then look to the power of appeal, which possibly might be framed in such a way as to show that the Legislature did not mean it to be conclusive. This provision is contained in the 24th section of the 43 Geo. 3, cap. 99, which enacts that 'if any person should think himself *overcharged* or *overrated* by any assessment or surcharge, &c., it shall be lawful for him to appeal to the Commissioners,' &c. It is argued that the wording of this clause shows that the Legislature meant it to apply only to persons liable to be rated, *but rated for too much*. Admitting it to be so, and that the word 'overrated' has that meaning, then this plaintiff is in the predicament of a person overrated, since he is clearly liable to *part* of the rate, &c. . . . I think the word 'overrated' ought not to receive the narrow construction attempted to be put upon it. Though, in its strict sense, 'overrating' means rating for *more* than ought to be, yet it *may* also mean rating when the party *ought not to have been rated at all*. If the latter be not the meaning of the word in the statute, this absurdity would follow: that provision is made for the case of an *excess* of rating, and none whatever for a rate altogether unjust." It only remains to be added that our statute, besides using the words "undercharged" or "overcharged," also uses the words "*wrongfully* inserted on or omitted from the roll." In *Scragg* v. *London*, 26 U. C. Q. B. 271, Hagarty, J., when referring to the language of our statute, said: "Language more apparently indicating the establishment of a rule of decision to govern *all cases* and *bar all further question* as to the liability to assessment could, we think, not easily be used." In *McCarrall* v. *Watkins*, 19 U. C. Q. B. 248,

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may be further amended, on appeal to the Judge of the County Court. (*s*)

Further powers granted to court of revision for remitting or reducing taxes.

**62.** The Court shall also, before or after the fifteenth day of June, and with or without notice, receive and decide upon the petition from any person assessed for a tenement which has remained vacant during more than three months in the year for which the assessment has been made, or from any person who declares himself, from sickness or extreme poverty, unable to pay the taxes, or who, by reason of any gross and manifest error in the roll as finally passed by the Court, has been overcharged more than twenty-five per cent. on the sum he ought to be charged, (*t*) and the Court may, subject to the provisions of any By-law in this behalf, remit or reduce the taxes due by any such person, or reject the petition; (*u*) and the Council of any local Municipality

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where a person who at one time had been an occupant of a house, but never was owner or had any pretence to be owner, was assessed as owner, but paid no attention to the notice of assessment, Sir J. B. Robinson said: "But whether he was assessed on the roll as owner or as occupier, it was incumbent on him to appeal or to petition under the 26th section of 16 Vic. cap. 182, if he meant to insist that his name was *wrongfully inserted* on the roll. Having *omitted* to do so, he became liable to pay the amount for which he stood assessed on the roll."

(*s*) One would suppose that the position of a person in possession of property which is exempt from taxation ought not to be in a better position as regards liability to assessment than the man who has no property at all. And yet the Court of Queen's Bench, according to the early cases in that Court (*Great Western Railway Co.* v. *Rouse*, 15 U. C. Q. B. 168; *London* v. *Great Western Railway Co.* 17 U. C. Q. B. 262), appear to have decided that a person exempt from taxation need not appeal; while in this case they held that a person who was not owner of the property for which he was assessed was bound to appeal, and, failing to do so, was bound to pay taxes as owner. (See note *a* to sec. 51, and note *i* to sec. 69 of this Act.)

(*t*) The classes of persons entitled to avail themselves of the provisions of this section are three, viz.:

1. A person assessed for a tenement which has remained vacant during more than three months in the year for which the assessment has been made.
2. A person who declares himself, from sickness or extreme poverty, unable to pay the taxes.
3. A person who, by reason of any gross and manifest error in the roll as finally passed by the Court, has been overcharged more than twenty-five per cent. on the sum he ought to be charged.

(*u*) The Court is bound to receive and decide upon the petition of a person coming within the meaning of this section. The decision may be either for the remission or reduction of the taxes, or for rejection of the petition, subject always to the provisions of any By-

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may from time to time make such By-laws, and repeal or amend the same. (*v*)

*Appeal from the Court of Revision.*

Appeal from court of revision.

**63.** An appeal to the County Judge shall lie (*a*) not only against a decision of the Court of Revision on an appeal to said Court, but also against the omission, neglect or refusal of said Court to hear or decide an appeal, (*b*) and in such case: (*c*)

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law in this behalf passed by the Municipal Council. (See note *h* to sec. 58 of this Act.)

(*v*) "*May* from time to time make," &c. See note *b* to sec. 412 of the Municipal Institutions Act.

(*a*) No man can be allowed to complain of his own act. Where the appellant not only attended the meeting at which the application was made of the Town funds of which he complained, but himself settled the form of the resolution against which he appealed, it was held that he could not be allowed to appeal. (*Harrup* v. *Bayley*, 6 E. & B. 218.) "According to every principle of justice, he cannot complain of what was his own act." (*Per* Lord Campbell, C.J., *Ib.* 224; see further, note *k* to sec. 131 of the Municipal Institutions Act.) In *The King* v. *Justices of Norfolk*, 5 B. & Ad. 990-992, Lord Denman said, speaking of appeals to Quarter Sessions: "It is desirable that the Court of Quarter Sessions should not vary their rules from time to time, and that they should rather lean to the hearing of appeals than to dismissing them on technical grounds." But a person who, after a summary conviction, at once expresses dissatisfaction and gives a notice of appeal, is entitled to be heard, although he paid the amount of the fine —the payment having been made to prevent the distress and sale of his goods. (*In re Justices of York and Peel*, 13 U. C. C. P. 159.) Draper, C. J., said: "I think further, that a party should not, on any doubtful ground, be deprived of a right of appeal against a summary conviction; and that if his conduct can fairly bear a contrary interpretation, it should not be construed as a waiver of this right. I am disposed to extend rather than to narrow Lord Denman's remark, that the Court of Quarter Sessions 'should rather lean to the hearing of appeals than to dismissing them on technical grounds.'" (*Ib.* 162, 163.)

(*b*) See note *h* to sec. 58 of this Act.

(*c*) Such an appeal as the present can only exist by statute, and only to the extent that the statute plainly gives the right. (*Attorney-General* v. *Sillem*, 10 H. L. C. 704; *People* v. *Police Justice*, 7 Mich. 456; *Dubuque* v. *Rebman*, 1 Iowa, 444; *Conboy* v. *Iowa City*, 2 Iowa, 90; *Muscatine* v. *Steck*, 7 Iowa, 505.) The Municipal authorities are not bound, in the absence of statutory requirement, to inform a person either of his right of appeal or of the proceedings necessary to prosecute the appeal. (*The King* v. *Justices of West Yorkshire*, 3 M. & S. 493, 496; see also, *Murphy q. t.* v. *Harney*, 9 U. C. C. P. 528.) Ignorance of the provisions of a statute, as the present, is no excuse for non-compliance with its provisions. In Schedule B, a notice giving the necessary information as to an appeal to the Court of Revision is given.

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(1.) The person appealing shall, in person, or by his attorney or agent, serve upon the Clerk of the Municipality, within five days after the first day of July, a written notice of his intention to appeal to the County Judge; (*d*)

Service of notice of appeal.

(*d*) The decision of the Court of Revision is binding, subject to an appeal which is here given apparently on certain conditions. In *Adey* v. *Hill*, 4 C. B. 40, Wilde, C. J., speaking of Eng. stat. 6 & 7 Vic. cap. 18, sec. 62, said: "Upon the ground, therefore, that the right of appeal against the decision of the Revising Barrister is given only upon a condition which has not been complied with in the present case, the Court is unanimously of opinion that the appellant is not in a situation to be heard." (See further, *Torrance* v. *McPherson*, 11 U. C. Q. B. 200; *In re Meyers and Woonacott*, 23 U. C. Q. B. 611; *In re Toze and Preston*, 23 U. C. Q. B. 310; *Pentland* v. *Heath*, 24 U. C. Q. B. 464; *McLellan* v. *McClellan*, 2 U. C. L. J. N. S. 297.) One of the conditions imposed by this section is, that the person appealing shall, in person or by his attorney or agent, serve upon the Clerk of the Municipality, within five days after the first day of July, a written notice of his intention to appeal to the County Judge. When the Legislature is thus giving to a Judge jurisdiction over rights that have always been the subject of such watchful jealousy, it is in a peculiar manner incumbent on the Judge to confine himself strictly within the limits prescribed for him. "A deliberate deviation from an enactment so express and positive in its terms would induce a mischief much greater than any inconvenience that can arise from the blunder of the appellant in this case." (*Per* Wilde, C. J., in *Adey* v. *Hill*, 4 C. B. 38, 40; see further, *Wanklyn* v. *Woolcott*, 4 C. B. 86; *Woolcott* v. *Davis*, *Ib.* 115.) The first point to be noted is, that the notice must be in *writing*. (See *The Queen* v. *Justices of Salop*, 4 B. & Al. 626; *The Queen* v. *Justices of Surrey*, 5 B. & Al. 539; *The Queen* v. *Justices of Lincolnshire*, 3 B. & C. 548; *The Queen* v. *Justices of Huntingdonshire*, 19 L. J. M. C. 127.) It is not said that it *must* be signed. (*Petherbridge* v. *Ash*, 4 C. B. 74; see also, *Curtis* v. *Bright*, 11 C. B. N. S. 95; *The Queen* v. *Justices of Kent*, L. R. 8 Q. B. 305; see further, note *a* to sec. 128 of the Municipal Institutions Act.) It must be given "*within* five days after the first day of July." (See note *a* to sec. 128 of the Municipal Institutions Act.) The first day of July is now the day fixed by law for the final revision of the roll by the Court of Revision. (37 Vic. cap. 19, sec. 11.) By sub. 11 of sec. 60 it is declared that "every notice hereby required shall be completed *at least* six days before the sittings of the Court." (See notes to that subsection.) In England, under a somewhat analogous statute, there is a power ("it shall be lawful," &c.,) delegated by the Legislature to the Court, "if it shall appear to the Court *that there has not been reasonable time* to give or send such notice (ten days at least), in any case to postpone the hearing of the appeal in such case, as to the said Court shall seem meet." (6 & 7 Vic. cap. 18, sec. 64.) In speaking of this provision, Wilde, C. J., said: "Postponing the consideration of the appeals to the next term, as suggested, would not have the effect of relieving the parties from the difficulty (the day appointed for the hearing of the appeals having been unusually early). The day appointed by

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Day for hearing.

(2.) The Judge shall notify the Clerk of the day he appoints for hearing appeals; (*e*)

Clerk to notify parties.

(3.) The Clerk shall thereupon give notice to all the parties appealed against in the same manner as is provided

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the Court for the hearing of the appeals would be still the same. Unless, therefore, the Court is prepared to act in a manner that would be wholly inconsistent with judicial gravity and decorum, by resorting to a mere subterfuge in order to get over a supposed difficulty, the objection that now presents itself would not be at all lessened by the lapse of time." (*Adey* v. *Hill*, 4 C. B. 38, 40.) In another case the same learned Judge said: "The attorney has had the whole time between the decision of the case by the Revising Barrister and the fourth day of the term, inclusive, to prepare and deliver his notice. He has thought fit to leave it till the last moment, when there is no time left to remedy the defect. The only power we have to extend the time is under section 64, and that applies to the notice of the respondent, and not to a case like this." (*Petherbridge* v. *Ash*, 4 C. B. 74, 75; see also, *Brown* v. *Tamplin*, L. R. 8 C. P. 241.) Courts of Revision are now expressly authorized to appoint adjourned sittings for the purpose of hearing appeals, for which notices were not served in time for the first day. (37 Vic. cap. 19, sec. 13.) The appearance of the party on whom the notice was served, for the purpose of objecting to the sufficiency of the notice, is no waiver. (*The Queen* v. *Cornwall*, 25 U. C. Q. B. 286; see also, *Grover* v. *Bontems*, 4 C. B. 70.) The notice is to be of the intention of the party to appeal. Its object is simply to inform the parties concerned that the person decided against is dissatisfied, and intends to avail himself of the right to appeal which the statute gives him. If it substantially give this information, it will be, no matter what the form be, held sufficient. (*The Queen* v. *Justices of Denbighshire*, 9 Dow. 509; *The Queen* v. *Justices of Oxfordshire*, 4 Q. B. 177; *The Queen* v. *Westhoughton*, 5 Q. B. 300; *The Queen* v. *Justices of Buckinghamshire*, 4 E. & B. 259, note *b*; see also, *The Queen* v. *Recorder of Liverpool*, 15 Q. B. 1070.) The grounds of the appeal need not be stated on the notice, unless so required by the statute giving the appeal. (*The Queen* v. *Westmoreland*, 10 B. & C. 226; see also, *The Queen* v. *Derby*, 20 L. J. M. C. 44; see further, *The Queen* v. *Justices of Newcastle-upon-Tyne*, 1 B. & Ad. 933; *The Queen* v. *Justices of Oxfordshire*, 1 B. & C. 279; *The Queen* v. *Sheard*, 2 B. & C. 856.) But it should, on the face of the notice, in some manner appear that the party is dissatisfied with the decision intended to be appealed against. (*The Queen* v. *Mayor of Harwich*, 1 E. & B. 617; see also, *The Queen* v. *Justices of West Riding Yorkshire*, 7 B. & C. 678; *The Queen* v. *Blackawton*, 10 B. & C. 792; *The Queen* v. *Justices of Essex*, 5 B. & C. 431.) There does not appear to be any power to waive these notices so as to give the Court jurisdiction. (See *Newton* v. *Overseers of Mobberly*, 2 C. B. 203, and *Grover* v. *Bontems*, 4 C. B. 70; see also, sub. 11 of sec. 60 of this Act, and note *n* thereto.)

(*e*) The duration of the notice is not here in express terms specified. Possibly sub. 11 of sec. 60 would apply, wherein it is declared that every notice hereby required, whether by publication, letter or otherwise, shall be completed at least six days before the sitting of the Court.

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for giving notice of complaint by the sixtieth section of this Act; but in the event of failure by the Clerk to have the required service in any appeal made, or to have the same made in proper time, the Judge may direct service to be made for some subsequent day upon which he may sit; (*f*)

List of appellants, &c., to be posted up by clerk.

(4.) The Clerk of the Municipality shall cause a conspicuous notice to be posted up in his office, or the place where the Council of the Municipality hold their sittings, containing the names of all the appellants and parties appealed against, with a brief statement of the ground or cause of appeal, together with the date at which a Court will be held to hear appeals; (*g*)

Clerks of court.

(5.) The Clerk of the Municipality shall be the Clerk of such Court; (*h*)

Hearing and adjournment.

(6.) At the Court so holden, the Judge shall hear the appeals, and may adjourn the hearing from time to time, and defer judgment thereon at his pleasure, (*i*) so that all the

(*f*) In *The Queen* v. *The Court of Revision of the Town of Cornwall*, 25 U. C. Q. B. 291, Morrison, J., said: "It was argued on the part of the relator that the neglect of the Clerk, or a failure by him in the performance of his duty, ought not to have prevented the complaints being heard, and that all that was incumbent on the relator was to make a request under sub. 2 to the Clerk. Upon an examination of sec. 60, and its subs. 2, 7, 8 and 10, which bear on this application, we find that they are all *imperative*, by force of the Interpretation Act; and when we consider the object of the complaints made by the relator, we cannot overlook *the plain words of the statute.*" The provision here for the authorization of service for a subsequent day, in the event of failure of the Clerk to do what is required of him, meets the difficulty.

(*g*) See preceding note.

(*h*) It is obligatory upon the Clerk of the Municipality to act as Clerk of the Court.

(*i*) It has been made a question whether any new evidence can be gone into or fresh witnesses called on an appeal from the decision of an inferior tribunal, in the absence of statutory provision to that effect. In the case of a conviction for an offence, it is said, the party offending has due notice of the hearing, and it is his duty to bring all his evidence to the hearing. (*Keen* v. *Stuckely*, Gilb. R. 155, 156; 3 Black. Com. 455.) Superior Courts *review* the sentences of inferior ones, but that only, and do not admit new evidence not produced below in order to examine the justice of a sentence that was not in any degree produced by it. (See Dickenson, Quarter Sessions, 907, note.) In a civil bill appeal in Ireland, Richards, B., held that new evidence is inadmissible. (*Gorman* v. *Beaghan*, 3 Cr. & Dix. C. C. 344; Richards, B., Brunker's Digest, 1206.) But in *The King* v. *Commissioners of Excise*, 3 M. & S. 133, it was held that the Commissioners of Appeals on matters of Excise could not properly reject the testimony of witnesses tendered for the appellant, upon an appeal to them against a conviction by the Commissioners of Excise, upon the ground that such

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appeals be determined before the first day of August. (37 V. c. 19, s. 16.) (*k*)

Appeals with respect to non-residents' lands.

**64.** In case any non-resident, whose land, within the limits of any City, Town, Incorporated Village or Township, has

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witnesses were not examined at the original hearing. (*The King* v. *Commissioners of Appeals in Excise*, 3 M. & Sel. 133.) In delivering judgment, Lord Ellenborough said: "If any inconvenience is likely to result from this determination, the Legislature must be applied to to remedy it." (*Ib.* 143.) In *The King* v. *Jeffreys*, 1 B. & C. 604, however, where a person who had been summoned by two Justices, under 7 & 8 Wm. 3, cap. 6, sec. 1, appeared before them and was ordered to pay the tithes demanded, and raised no question as to the *modus*, but afterwards appealed to the Sessions, and at the Sessions for the first time set up a the *modus*, it was held that the Justices of the Sessions might, in the exercise of their discretion, rightly reject the new evidence. In *The King* v. *The Justices of Suffolk*, 1 B. & Al. 640, where an appeal was made to the Sessions against a rate, on four grounds specified, and the party, being still dissatisfied, made a further appeal to the General Sessions, specifying two additional grounds of appeal, Bayley, J., said: "The impression on my mind is, that he must, at the *County* Sessions, be confined to the same grounds of objection that he took at the *Borough* Sessions, for the former Court is in the nature of a *Court of Review*, and it is their duty to examine if the rate can be supported on the grounds decided upon by the Court below. If that were not so, it would be open to the party at the Borough Sessions to state any illusory grounds of appeal, and to *put forth his whole strength by surprise at the County Sessions.*" (*Ib.* p. 645.) Holroyd, J., said: "The County Sessions are to re-try the same matters which were triable at the Borough Sessions. In all cases of new trials or of error, the Court of Appeal looks at the original proceedings. *There may, however, be fresh evidence adduced.* . . . The appeal to the County Sessions must here be confined to the *original matter of complaint only.*" (*Ib.* 646.) Paley says: "It seems to be an universally admitted rule that, in every case of appeal to the Sessions, both parties are at liberty to examine competent witnesses on their behalf, *without regard to whether they have been examined before or not.*" (Paley on Convictions, 5 Ed. 369.) In England, the Legislature has at length, as suggested by Lord Ellenborough in *The King* v. *Commissioners of Excise*, 3 M. & Sel. 133, interfered in matters of excise by 7 & 8 Geo. 4, cap. 53, sec. 84, as amended by 4 & 5 Wm. 4, cap 51, sec. 24, by providing that no witnesses are to be examined on an appeal in matters of excise except those who were examined before the Justices, or tendered for examination and refused by them. (See *The Queen* v. *Gamble*, 16 M. & W. 384.) In *Kirby* v. *The Owners of the Scindia*, L. R. 1 P. C. 241, the Privy Council, as a matter of discretion, refused to receive fresh evidence upon an appeal from an interlocutory decree of the Vice Admiralty Court of the Cape of Good Hope, in a cause of salvage. The result of the authorities would appear to be, that it is in the discretion of the County Judge to receive fresh evidence in support of the grounds of appeal raised in the Court of Revision, but not in support of any new or additional grounds of appeal.

(*k*) See note *h* to sec. 189 of the Municipal Institutions Act.

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been or shall be assessed in any revised and corrected assessment roll, (*m*) complains by petition to the proper Municipal Council, at any time before the first day of May in the year next following that in which the assessment is made, (*n*) such Council shall, at its first meeting, after one week's notice to the appellant, (*o*) try and decide upon such complaint; (*p*) and all decisions of Municipal Councils under this Act may be appealed from, tried and decided, as provided by the sixtieth section of this Act; (*q*) and if the lands shall be found to have been assessed twenty-five per centum higher than similar land belonging to residents, the Council or Judge shall order the taxes rated on such excess to be struck off; (*r*) and in all such cases where the land has been subdivided into park, village or town lots, if the same are owned by the same person or persons, the statute labour tax shall be charged only upon the aggregate of the assessment, according to the provisions of this Act; (*s*) but no roll shall be amended

Lots subdivided not to affect rolls revised and corrected.

(*m*) This section probably has reference only to non-residents whose names are not on the roll, and who would therefore not receive the notice made necessary by sec. 48 of this Act, and who would not have any notice of the day on which the roll would be returned, so as to appeal within fourteen days after its return, as required by sec. 60, sub. 1.

(*n*) The first provision, similar to this, in aid of non-residents, enabled the dissatisfied non-resident to petition "at any time before the taxes so assessed have been paid or collected." (24 Vic. cap. 38, sec. 3.) This was found to interfere so materially with the collection of taxes on non-resident land, that the law was amended by substituting for the words above quoted, the words, "at any time before the first day of May in the year next following that in which the assessment is made." (27 Vic. cap. 19, sec. 8.) And such is the limitation in this Act provided.

(*o*) See note *d* to sub. 1 of sec. 63 of this Act.

(*p*) See sec. 58 of this Act, and notes thereto.

(*q*) See sec. 60 of this Act, and notes thereto.

(*r*) If the Council be of opinion that the land is not rated higher than similar land belonging to non-residents, they will, of course, dismiss the complaint. (*In re Judge of Perth*, 12 U. C. C. P. 252.)

(*s*) The rule is to *charge* the commutation tax for statute labour against every separate lot or parcel, according to its assessed value. (Sec. 89.) Provided always, that whenever one person shall be assessed for lots or parts of several lots in one Municipality, not exceeding in the aggregate two hundred acres, the said part or parts shall be rated and charged for statute labour as if the same were one lot, and the statute labour shall be rated and charged against any excess of said parts in like manner. (33 Vic. cap. 27, sec. 6.) But every resident shall have the right to perform his whole statute labour in the statute labour division in which his residence is situate, unless otherwise ordered by the Municipal Council. (Sec. 89.)

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Appeals against former assessments not affected.

under this section of this Act if the complaint was tried and decided before such roll was finally revised and corrected, under the provisions of the sixtieth, sixty-first, sixty-second and sixty-third sections of this Act; (*t*) and this clause shall not affect the right of appeal against the assessment made prior to the year one thousand eight hundred and sixty-six, at any time before the land in question shall have been sold for taxes; and if such lands should, during such appeal, be advertised for sale, the land shall be charged with all costs incurred, but no appeal shall be made after the issue of a warrant by the Treasurer or Chamberlain for the collection of taxes. (*u*)

Assessment roll to be produced to the court,

**65.** At the Court to be holden by the County Judge, or acting Judge of the Court, to hear the appeals hereinbefore provided for, (*a*) the person having the charge of the assessment roll passed by the Court of Revision shall appear and produce such roll, and all papers and writings in his custody connected with the matter of appeal, (*b*) and such roll shall be altered and amended according to the decision of the Judge, if then given, who shall write his initials against any part of the said roll in which any mistake, error or omission is corrected or supplied; (*c*) or if the said roll be not then produced or the decision be not then given by the Judge,

And amended, &c.

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(*t*) If there be a previous judgment between the same parties on the same subject matter, and that once established, there would be no possibility of going behind the judgment and examining the grounds on which it proceeded; for as long as it remained in force and unreversed, it would be conclusive between the parties. (*Per* Lord Chelmsford, in *Commissioners of the Leith Harbour* v. *Inspector of the Poor*, L. R. 1, H. L. Sc. 17, 23.)

(*u*) In cases here contemplated, the right of appeal exists till the issue of the warrant for the collection of taxes. So long as the demand is in the nature of a judgment, the right to appeal exists. But when execution is, as it were, issued, the right of appeal is gone.

(*a*) This section applies to all appeals that may be and are legally brought before the County Judge or acting Judge for his decision.

(*b*) The person having the custody of the roll passed by the Court of Revision would, properly speaking, be the Municipal Clerk. It is made his duty, on the hearing of the appeal, not only to produce the roll, but "all papers and writings in his custody connected with the matter of appeal." This would include all exhibits and other papers given in evidence before the Court of Revision, touching the appeal in that Court.

(*c*) It is presumed that the alteration of the roll by the Judge, in any case where he is without jurisdiction, would be of the same and no other effect than the alteration of the roll by a stranger.

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such decision and judgment shall be certified by the Clerk of the Court to the Clerk of the Municipality, who shall forthwith alter and amend the roll according to the same, and shall write his name against every such alteration or correction. (*d*)

Amendments, how certified.

**66.** In all proceedings before the County Judge or acting Judge of the Court, under or for the purposes of this Act, such Judge shall possess all such powers for compelling the attendance of, and for the examination on oath of, all parties, whether claiming or objecting, or objected to, and all other persons whatsoever, and for the production of books, papers, rolls and documents, and for the enforcement of his orders, decisions and judgments, (*e*) as belong to or might be exercised by him, either in term time or vacation, in the same Court, in relation to any matter or suit depending in the said Court.

County judge to have power to examine on oath, &c.

**67.** The cost of any proceeding before the Court of Revision or Judge as aforesaid shall be paid by or apportioned between the parties, in such manner as the Court or Judge shall think fit, (*f*) and costs ordered to be paid by

Costs to be apportioned by the judge, and how enforced.

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(*d*) It is, in the case here provided for, made the duty of the Clerk of the Municipality, upon receipt of a certificate of the decision from the Clerk of the Court, "forthwith" to "alter and amend" the roll, and for evidence, in the event of any dispute as to the fact, "to write his name against every such alteration or correction." The order to amend is not the amendment. The latter, to be effectually made, should be actually made; and this is what is contemplated in the first part of the section, in the production of the roll, and in the latter part by the certificate to the Clerk, and alteration of the roll by the Clerk. (See also sec. 69 of this Act.)

(*e*) The powers enumerated are:

1. For compelling the attendance of, and for the examination on oath of, all parties, whether claiming or objecting, or objected to, and all other persons whatsoever.
2. For the production of books, papers, rolls and documents.
3. For the enforcement of orders, decisions and judgments.

As to these, the Judge has the powers which belong to, or might be exercised by, him in the Division Court. (37 Vic. cap. 19, sec. 17.)

All process or other proceedings in or about or by way of appeal, may be entitled as follows:

"'In the matter of appeal from the Court of Revision of the of . appellant, and respondent;' and the same need not be otherwise entitled." (*Ib.*)

(*f*) The costs chargeable, or to be awarded, in any case may be the costs of witnesses and of procuring their attendance, and none

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any party claiming or objecting, or objected to, or by any Assessor, Clerk of a Municipality, or other person, may be enforced, when ordered by the Court, by a distress warrant under the hand of the Clerk and corporate seal of the Municipality; and when ordered by the Judge, by execution from the County Court of which such Judge is the Judge, in the same manner as upon an ordinary judgment recovered in such Court. (*g*)

By what scale of fees costs to be taxed.

**68.** The costs shall be taxed according to the schedule of fees under the Division Courts Act, as in suits for the recovery of sums exceeding forty and not exceeding sixty dollars in the said Court. (*h*)

Decision of county judge to be final.

**69.** The decision and judgment of the Judge or acting Judge shall be final and conclusive in every case (*i*) adjudi-

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other. (37 Vic. cap. 19, sec. 19.) And the same are to be taxed according to the allowance in the Division Court for such costs. (*Ib.*) In cases where execution shall issue, the cost thereof as in the like Court, and of enforcing the same, may also be collected thereunder. (*Ib.*)

(*g*) Where costs are ordered to be paid by any party claiming or objecting, or objected to, or by any Assessor, Clerk of a Municipality or other person, the same must be enforced by execution, to be issued as the Judge may direct, either from the County Court or the Division Court within the County of which the Municipality or assessment district, or some part thereof, is situated, in the same manner as upon an ordinary judgment for costs recovered in such Court. (37 Vic. cap. 19, sec. 18.)

(*h*) The schedule to which reference is here made only provided for payment of costs to the Court. No provision whatever is made by it for costs to the parties for loss of time or otherwise. The costs in appeal are to be taxed according to that schedule. It applies only to proceedings in Division Courts. But when execution is required for the costs so taxed according to the Division Court's tariff, such execution can only be issued from the County Court. (See note *g* to sec. 67.)

(*i*) The decision, &c., is made final and conclusive in *every case* adjudicated. The words do not mean that the decisions on appeals to the County Judge shall be final and conclusive to all intents and purposes, but merely that the judgment shall be final and conclusive in the *particular case*. The Judge, though sitting in appeal, may, it is apprehended, review his previous decisions, and overrule them if clearly demonstrated to be erroneous. (See *Webster* v. *Overseers, &c.*, L. R. 8 C. P. 306.) And the decision, &c., is only final and conclusive in the particular case adjudicated, *where there is power or jurisdiction to adjudicate*. (See note *r* to sec. 61.) If there be power to adjudicate, the result is to be looked at as the decision or judgment, regardless of the reasons given for arriving at that result. (*In the matter of the Mayor of Hythe*, 5 A. & E. 832; *The Queen* v. *Bolton*, 1 Q. B. 66; *Thompson* v. *Ingham*, 14 Q. B. 710; *The Queen* v.

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*Dayman*, 7 E. & B. 672; *Forster* v. *Forster*, 4 B. & S. 187; *The Queen* v. *Levi*, 34 L. J. M. C. 174; *Wildes* v. *Bussell*, L. R. 1 C. P. 722; *Ex parte Vaughan*, L. R. 2 Q. B. 114; *Elston* v. *Rose*, L. R. 4 Q. B. 4.) If there was jurisdiction in the particular Court to adjudicate, and the decision of that Court is made final or conclusive, no other Court can review the sufficiency of the reasons; often there is a good judgment and bad reasons. (*Ib.*) In *Allen* v. *Sharp*, 2 Ex. 352-360, Parke, B., said: "Wherever a statute gives to certain persons the power of adjudicating upon a particular matter, their jurisdiction excludes all further inquiry. Here it is as if the statute had said that the Assessor shall decide whether or no the person is a horse dealer; and the Assessor having done so his decision is final and conclusive, unless appealed against in the manner pointed out by the Act." In *Niagara Falls Suspension Bridge Co.* v. *Gardner*, 29 U. C. Q. B. 194-200, Wilson, J., said: "The Judge had power to *reduce* the assessment made, and he has done so. But it is said he did so upon a false ground and for a bad reason; that he did so because the land was not land according to the interpretation of the Assessment Act, and not because the assessment was too high. There is no rule of law which requires the Judge to give the reasons on which his judgment is founded. His reasons may be bad, but his conclusion or judgment, however illogical it may be, will, nevertheless, be good. We do not think it would be *safe* to say that in *no case* can the decision of the Court of Revision or of the County Judge be questioned by an action, although the statute declares that the decision of the Court shall be valid and binding on all parties if not appealed from to the County Judge, and that his decision shall be final and conclusive. If the Judge were to decide that property expressly exempted was not exempt, or that non-residents should be assessed personally on the roll, although they had given no notice to be so assessed, and protested against it, his decision, no doubt, would *not* be final. It would be void and be inquirable into, in an action, for he would in such a case be acting wholly without jurisdiction. But in cases where he has jurisdiction his decision is final, though it is plainly erroneous. Here he had jurisdiction to say whether *the property* was assessed too high or too low. This gave him authority to inquire into *the nature of the property*. He came to the conclusion that it was assessed too high, because the chief part of the property in question was personal and not real property. His decision that it was personal property was plainly erroneous, for it undoubtedly *was* and *is* land and real estate within the meaning of the statute, and at common law. There is not the *slightest pretence* for calling it personal, yet we *fear* his decision is irreversible. The statute has declared it shall be final and conclusive in all cases adjudicated." If this reasoning be sound, and applied to cases of exemption of real and personal property, it would prove that there is jurisdiction to rate real or personal property plainly exempt from taxation so long as the Judge, with or without or against reason, *increases* or *reduces* the assessment. Take an exemption of real estate by reason of its occupation by the Crown. The Judge has power to inquire into the nature of the property. He comes to the conclusion that it is personal property. He accordingly *increases* the assessment. His decision that it was personal property was plainly erroneous. But he had jurisdiction to increase or reduce the assessment. The result is, that property which *is* real estate, and which *is* real estate and

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exempt by law, is taxed because the Judge, having power to increase or reduce, *calls* it personal estate and *increases* the amount. But, after all, the question really is, whether a person assessed for property exempt is not as much bound to appeal as the person taxed for property which he does not own; for in the latter case it has been held that if the party *wrongfully assessed* omit to appeal, he is bound by the roll. (See note *r* to sec. 61 of this Act..) Mr. Baron Parke, in *Allen* v. *Sharpe*, 2 Ex. 365, said: "Though in its strict sense overrating means rating for *more* than it ought to be, yet it *may* also mean rating when the party *ought not to have been rated at all.*" If in our statute the only words used were undercharged or "overcharged," it might be argued, according to the reasoning of Baron Parke, that a person wrongfully assessed is overcharged and so must appeal. Where the foundation of the jurisdiction is defective, a prohibition may be applied for at once. (*The Mayor, &c., of London* v. *Cox*, L. R. 2 H. L. C. 239; *Everard* v. *Kendall*, L. R. 5 C. P. 428; *James* v. *London and South Western Railway Co.* L. R. 7 Ex. 187; s. c. L. R. 7 Ex. 287; *Jay Cook* v. *Gill et al*, L. R. 8 C. P. 107; *Whinney* v. *Schmidt*, *Ib.* 118; *In re Charkieh*, L. R. 8 Q. B. 197.) The Court of Chancery has jurisdiction to grant prohibition, (*Re Bateman*, L. R. 9 Eq. 660; see also, *In re Foster*, 3 Jur. N. S. 1238,) but will, in general, leave the party applying for it to the Common Law Courts, if the Common Law Courts be sitting. (*Ib.*) Either prohibition (28 Vic. cap. 18, sec. 2,) or *mandamus* (35 Vic. cap. 14, Ont.) may now be obtained from a Judge of the Common Law Courts in vacation. Those who seek prohibition must apply with promptitude. (*In re Denton and Marshall*, 1 H. & C. 654.) It may be granted after judgment and sentence in the inferior Court, when the party has had no opportunity of applying earlier to the superior Court, and has not acquiesced in the proceedings of the inferior Court. (*Roberts* v. *Humbly*, 3 M. & W. 120; *Yates* v. *Palmer*, 6 D. & L. 283; *Aldridge* v. *Cato*, L. R. 4 P. C. 313; but see *In re Poe*, 5 B. & Ad. 681.) It may, in the discretion of the Court, be granted on the application of a stranger. (*De Haber* v. *The Queen of Portugal*, 17 Q. B. 171; *The Queen* v. *Twiss*, 10 B. & S. 298.) The affidavits should be intituled simply in the Court, and not in any cause. (*Ex parte Evans*, 2 Dowl. N. S. 410; see further, *Breeden* v. *Capp*, 9 Jur. 781.) If the application fail it will not be allowed to be renewed upon affidavits stating matter not before presented to the Court, but existing at the time of the original application. (*Bodenham* v. *Ricketts*, 6 N. & M. 537.) The decision of the inferior Court on facts going to its jurisdiction is reviewable on an application for prohibition. (*Liverpool Gas Light Co.* v. *Overseers of Everton*, L. R. 6 C. P. 414.) The Court will not in such a case interfere by prohibition, unless it be perfectly clear that there has been an excess of jurisdiction. (*Ricardo* v. *Maidenhead Board of Health*, 2 H. & N. 257; *Manning* v. *Farquharson*, 6 Jur. N. S. 1300; *The Queen* v. *Twiss*, L. R. 4 Q. B. 407; see also, *Bongard* v. *McWhirter*, 12 U. C. Q. B. 143; *McWhirter* v. *Bongard*, 14 U. C. Q. B. 84; *In re Chief Superintendent of Schools* v. *Sylvester*, 18 U. C. Q. B. 538.) But when in addition we have, as in our statute, the words "*wrongfully inserted*" on the roll, the obligation to appeal, if the matter were *res integra*, would be almost too plain for argument. (See note *a* to sec. 51 of this Act.) If any inferior Court proceed or attempt to proceed in a matter in which it has not

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cated, and the Clerk of the Municipality shall amend the rolls accordingly. (*k*)

Copy of roll to be transmitted to county clerk.

**70.** When, after the appeal provided by this Act, the assessment roll has been finally revised and corrected, the Clerk of the Municipality shall, without delay, (*l*) transmit to the County Clerk a certified copy thereof. (*m*)

*County Councils.*

Annual examination of assessment rolls by municipal councils, and for what purpose.

**71.** The Council of every County shall, yearly, before imposing any County rate, and not later than the first day of July, (*n*) examine the assessment rolls of the different Townships, Towns and Villages in the County, for the preceding financial year, for the purpose of ascertaining whether the valuation made by the assessors in each Township, Town or Village for the current year bears a just relation to the valuation so made in all such Townships, Towns and Villages, and may, for the purpose of County rates, increase or decrease the aggregate valuations of real and personal property in any Township, Town or Village, adding or deducting so much per centum as may, in their opinion, be necessary to produce a just relation between all the valuations of real and personal estate in the County, but they shall not reduce

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jurisdiction, there may be a prohibition from one of the superior Courts of Law. (*Darby* v. *Cosens*. 1 T. R. 552; *Ex parte Smyth*, 2 C. M. & N. 748; *The Queen* v. *Hereord*, 3 El. & E. 115.) A declaration by statute, that the proceedings of an inferior tribunal shall be final and conclusive, is held not to deprive the party of a writ of *certiorari* in cases where it is proper for such a writ to go—not to try the merits, but to see whether the limited jurisdiction has exceeded its bounds. (*The King* v. *Moreley*, 2 Burr. 1040; see also, *Ex parte Heath*, 3 Hill, N. Y. 42; *The King* v. *Commissioners*, 2 Keble, 43; *Lawton* v. *Commissioners*, 2 Caines, N. Y. 179; *Starr* v. *Trustees*, 6 Wend. 564; *People* v. *The Mayor*, 2 Hill, N. Y. 9; *Tierney* v. *Dodge*, 9 Minn. 166.) But where the declaration is made in reference to a Court of general and superior jurisdiction, as of the Supreme Court of New York (for example, in confirming appraisements for opening streets), there can be no appeal in any manner to a higher tribunal. (*In re Canal and Walker Streets*, 12 N. Y. 406; *In re New York Railroad Co.* v. *Marvin*, 11 N. Y. 276.)

(*k*) See note *d* to sec. 65 of this Act.

(*l*) See note *s* to sec. 125 of the Municipal Institutions Act.

(*m*) *i. e.* With a view to the collection by the County of taxes due on lands of non-residents, or other lands in respect of which taxes have not been collected.

(*n*) *Not later than*, &c. See note *h* to sec. 189 of the Municipal Institutions Act.

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the aggregate valuation thereof for the whole County as made by the assessors. (*o*)

(*o*) It is made the duty of the County Council, yearly: *To examine* the assessment rolls of the different Townships, Towns and Villages in the County for the preceding financial year, for the purpose of ascertaining whether the valuation made by the assessors in each Township, Town or Village for the current year bears a just relation to the valuation so made in all the Townships, Towns and Villages. And for the *purpose of County rates*, power is given *to increase or decrease* the aggregate valuations of real and personal property in any Township, Town or Village, adding or deducting so much per cent. as may, *in their opinion*, be necessary to produce a just relation between all the valuations of real and personal property in the County. But *they shall not reduce* the aggregate valuation thereof for the whole County, as made by assessors. Valuation of property, real or personal, is, to a great extent, a matter of opinion. (See note *v* to sec. 30 of this Act.) Some men are more sanguine than others, and therefore more likely, looking to the future, to make a higher estimate of present value than those who are less sanguine. Some men in their inquiries into a subject matter of investigation are more careless than others, and so more likely to take things for granted than others. These and similar considerations influencing assessors acting independently of each other, in different local Municipalities, often produce very dissimilar results even in adjoining Municipalities. But so far as the County is concerned for the purpose of County rates, a just relation is needed in order that the rate levied may bear, as nearly as possible, equally on all the local Municipalities in the County. In order to bring this about, when inequality is found, a power to increase or decrease the aggregate valuations of taxable property in the local Municipalities of the County, so long as the whole aggregate valuation of the County is not reduced, must be exercised by some body having authority over the whole of the local Municipalities, and that body is the County Council. The Legislature has not attempted absolutely to prescribe by what method of proceeding the local Municipalities shall be made to bear a just relation to each other. It could hardly have succeeded in any such attempt. Much must, of necessity, be left to the judgment of those who are to conduct the operation, and who, by reason of their local knowledge, are best qualified to do so. (*Per* Robinson, C. J., in *Gibson* v. *Huron and Bruce*, 20 U. C. Q. B. 119.)

We may suppose the Council fixing upon some one Township or Town, in the first place, as that in which the value appears to have been assigned with the strictest regard to truth and justice, and then, having selected such a standard, we may suppose them taking up each Township, Town, &c., and adjusting the valuation by such standard. In doing this, the members of the Council must, of necessity, be governed by their own judgment, and could not, in the nature of things, have any rule given to them by which they could arrive at any particular result. It must be entirely a matter of opinion whether, if land cleared or uncleared in Township A. is valued at such a sum per acre, land in Township B. ought to be valued at any and what other sum per acre. But when the Council shall have adopted the proportional value which land in one Township bears to land in another, and shall have compared them all by some standard, then

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(2.) In equalizing the rolls of the Towns and Villages, the they must ascertain and express how much per cent. must be added or deducted from the assessment in each local Municipality, to make them all bear just relation to each other. This is not given as a rule or method of proceeding that can guide or assist the Council in adjusting the relation between the different local Municipalities, but as a method by which they are to express to the collectors the effect of the relation they have established, as leading to an addition or deduction of so much per cent. to or from the assessment of each individual, according as they have found the assessment that has been made in the particular local Municipality too high or too low, as compared with the standard by which they have resolved to abide. This direction to the collector makes his duty afterwards simple and precise. But the business of the Council in equalizing the assessments is not one that can be accomplished by any arithmetical calculation. No two bodies of men, any more than any two individuals, could be expected to arrive at the same conclusions, if they attempted to make the adjustment independently of each other. The Legislature has not attempted to instruct the Council how they are to proceed in order to do equal justice. It has done the best it could in committing the duty to them on general terms of equalizing the assessments, so as to produce a just relation, but have necessarily left it to them, as best they can, to work out the problem. It is a thing more easily talked of than done. (*Per* Robinson, C. J., *Ib.* 120.)

Equalizing rolls of towns and villages.

It is not for a Court of law to interfere, as regards the reasonableness of the valuations and the conclusions to be come to on that point, by comparing the value set upon land in one Municipality with the value set upon land in another. It is not for a Court to judge of that. Even if it were, there are various circumstances to be taken into consideration, as bearing upon the question of computation and value, of which a Court has not the means of judging, for want of that local knowledge which the members of the County Council, chosen by the people themselves, must be supposed to possess, and doubtless do possess. It is not merely the fact that one Township has been long settled, and another not so long, that should alone influence the judgment in making the comparison, nor yet the number of inhabitants, though these are circumstances that would naturally be taken into consideration. Quality of soil and of timber, abundance or scarcity of water, distance from market, and the description of inhabitants, as well as their numbers, are matters that require to be considered in comparing one Township with another; and when these and all other matters have been considered, the conclusions to which they lead are to be formed by the Council, and not by a Court of law. But so far as the Legislature has assumed to prescribe rules for the guidance of a Municipal body, in the discharge of any duty or exercise of any power, such body must, beyond doubt or question, conform to the rules. And if the Council, where rules have been prescribed for their action, were to go contrary to the rules or in any way violate them, the Court, if this were clearly made out, would interfere by writ of *mandamus*, (*The Queen* v. *Middlesex*, 2



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County Council shall take sixty per cent. of the amounts returned on the rolls as the valuation of such Towns and Villages for the purposes mentioned in the preceding subsection, and the County Council shall then proceed to equalize the valuations in the several Municipalities, including the said Towns and Villages; and it shall be competent for the County Councils to increase or diminish the reduced valuations of the respective Towns and Villages, as well as the valuation of the Townships. (*p*) (37 V. c. 19, s. 22.)

Local municipality may appeal.

(3.) If any local Municipality shall be dissatisfied with the action of any County Council in increasing or decreasing, or refusing to increase or decrease, the valuation of any Municipality, the Municipality so dissatisfied may appeal from the decision of the Council to the Judge of the County Court of

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El. & B. 694,) and the act itself might be held illegal in any proceeding in which its legality would come in question. (*Lincoln* v. *Niagara*, 25 U. C. Q. B. 578.)

(*p*) While the first part of the section confers on the County Council the power to equalize, this subsection directs what *shall* be done "in equalizing." The direction is that the County is to take sixty per cent. of the amounts returned on the rolls as the valuation of Towns and Villages. One thing so far is obvious, and that is, that the aggregate valuation for Towns and Villages is to be sixty per cent. of the amount returned on the rolls. The question is, whether, before making such capitalization, the County Council has, under the preceding part of the section, power to alter the aggregate valuation of the Town or Village. That section empowered the County Council to alter the aggregate valuation of all local Municipalities, provided the aggregate valuation of the whole County was not thereby reduced. If this subsection were read as preventing the County Council at any time from altering the valuation of Towns and Villages, the equalization would become, as regards Towns and Villages, simply a cast iron rule, against which no judgment can be exercised and to which there can be no exception. The County Judge of Norfolk, in a case before him, before amendments made in this section, after much consideration adopted the latter interpretation. (*In re Simcoe and Norfolk*, 5 U. C. L. J. N. S. 181.) But now all difficulty is apparently removed by the declaration that "it shall be competent for the County Councils to increase or diminish the reduced valuations of the respective Towns and Villages, as well as the valuations of the Townships." The object of the enactment is, before equalization, to place the assessments of Townships, Towns and Villages, as nearly as possible on an equal plain. Property in Towns and Villages is notoriously assessed in a higher ratio than property in Townships. This is recognized by the Legislature to the extent of forty per cent.; *i.e.*, sixty per cent. of the amount returned on the rolls for Towns and Villages is to stand against the whole amount returned on the rolls for Townships. But after this is done,

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the County, (*q*) at any time within ten days (*r*) after such decision, (*s*) by giving to such Judge and the Clerk of the County Council a notice in writing, under the seal of the Municipality, of such appeal; (*t*) and the County Judge shall appoint a day for hearing the appeal, (*u*) not later than ten days from the receipt of such notice of the appeal, (*v*) and may at such Court proceed to hear and determine the matter of appeal, or adjourn the hearing thereof from time to time: (*w*) Provided that the same be not adjourned or judgment deferred beyond the first day of August next after notice of the appeal; (*y*) and such Judge shall equalize the whole assessment of the County. (*z*) (37 V. c. 19, s. 23.) Proviso.

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there must still be an equalization of the values of the several Municipalities, including Towns and Villages; and for the purpose of this equalization the Council may increase or reduce the valuation of any Municipality, including the reduced valuations of Towns and Villages.

(*q*) See note *d* to sec. 63 of this Act.

(*r*) "*Within* ten days," &c. See note *a* to sec. 128 of the Municipal Institutions Act.

(*s*) *Decision.* See notes to sec. 58 of this Act.

(*t*) See note *d* to sub. 1 of sec. 63 of this Act.

(*u*) See note *h* to sub. 4 of sec. 63 of this Act.

(*v*) See note *e* to sub. 2 of sec. 63 of this Act.

(*w*) See note *k* to sub. 6 of sec. 63 of this Act.

(*y*) See note *h* to sec. 189 of the Municipal Institutions Act.

(*z*) In the event of the Judge allowing the appeal and reducing the amount of the aggregate value of assessment of the particular Municipality appealing, the difference between the sum fixed by the County Council and the reduced sum allowed by the County Judge may be added to the aggregate valuations of the other local Municipalities, or some of them, according to the evidence before him, in such a manner that the aggregate valuation of the whole County is not reduced. In *Simcoe* v. *Norfolk*, 5 U.C. L.J. N.S. 182, the learned Judge, in delivering judgment, said in conclusion: "I therefore allow the appeal of the Town of Simcoe, and equalize their aggregate assessment for County purposes at the said sum of $303,000 (the amount returned on the roll). This leaves the total aggregate equalization of the County at the sum of $57,000 less; and it devolves upon me, according to the provisions of the statute, to divide and add this sum to or among the several Townships of the County, or some of them. In the absence of any evidence produced before me, and in the absence of any action of the County Council, it appears to me that my proper course is to divide and add the said sum of $57,000 *pro rata*, according to the previous equalization by the County Council, among the several Townships of the said County, thus:—

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Effect of clerk of municipality omitting to send copy of roll.

**72.** If the Clerk of the Municipality has neglected to transmit a certified copy of the assessment rolls, such neglect shall not prevent the County Council from equalizing the valuations in the several Municipalities according to the best information obtainable, (*a*) and any rate imposed according to the equalized assessment shall be as valid as if all the assessment rolls had been transmitted. (*b*)

Valuators to attest their report on oath.

**73.** In cases where valuators are appointed by the Council to value all the real and personal property within the County, (*c*) they shall attest their report by oath or affir-

| Townships. | Equalization by County Council. | Added by Judge. | Total. |
|---|---|---|---|
| Townsend | $1,140,000 | $13,500 | $1,153,500 |
| Windham | 735,000 | 8,000 | 743,800 |
| Middleton | 360,000 | 4,400 | 364,400 |
| Houghton | 285,000 | 3,300 | 288,300 |
| Walsingham | 760,000 | 9,000 | 769,000 |
| Charlotteville | 700,000 | 8,300 | 708,300 |
| Woodhouse | 825,000 | 9,700 | 834,700 |
| Simcoe, say $360,000 | 360,000 | .. | .. |
| Deducted by Judge.. 57,000 | .. | .. | 303,000 |
| $303,000 | $5,165,000 | $57,000 | $5,165,000 |

(*a*) It would never do if the neglect of a Clerk of one local Municipality to transmit a certified copy of his roll were to have the effect of delaying the entire proceedings of the County Council, with a view to equalization of assessment, especially as it is provided that the equalization is to be made "not later than the first day of July." (Sec. 71.) The only remedy is that provided, viz., to proceed to equalize, notwithstanding the absence of a particular roll or rolls.

(*b*) The Council, before imposing a County rate, must equalize the rolls as already mentioned. (Sec. 71.) If empowered to equalize in the absence of some roll or rolls, it follows that the rate imposed on the rolls so equalized must be deemed valid.

(*c*) The proper valuators of property, real and personal, in the different local Municipalities, are the assessors. But as these, in the several local Municipalities, act independently of each other, and as men, perhaps, differ more widely on the value of property than other matters of opinion, the results, so far as the whole County is concerned, are anything but equal or uniform. But before a County rate can be imposed, the valuations in the different local Municipalities must be equalized so as to bear a just relation to each other. (Sec. 71.) Such equalization has hitherto been effected through the members of the County Council themselves using their local knowledge in order to arrive at as correct a judgment as possible. This section appears to be designed as an aid to them in the exercise of that judgment. It is not declared that the valuation of the County

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mation in the same manner as assessors are required to verify their rolls by the one hundred and thirteenth section of this Act. (*d*)

Apportionment of county rates how to be based.

**74.** The Council of a County, in apportioning a County rate among the different Townships, Towns and Villages within the County, (*p*) shall, in order that the same may be assessed equally on the whole ratable property of the County, (*q*) make the amount of property returned on the assessment rolls of such Townships, Towns and Villages, or reported by the valuators as finally revised and equalized for the preceding year, the basis upon which the apportionment is made. (*r*)

Case of new municipalities.

**75.** If a new Municipality be erected within a County, so that there are no assessment or valuators' rolls of the new Municipality for the next preceding year, the County Council shall, by examining the rolls of the former Municipality or Municipalities of which the new Municipality then formed part, ascertain to the best of their judgment what part of the assessment of the Municipality or Municipalities had relation to the new Municipality, and what part should continue to be accounted as the assessment of the original Municipality, and their several shares of the County tax shall be apportioned between them accordingly. (*s*)

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valuators shall be binding on the Council, or their judgment in any way made a substitute for the judgment of the members of the County Council, on whom devolves the duty of making the equalization so as to produce a just relation.

(*d*) Probably sec. 49 of this Act is here intended. (See notes to it.)

(*p*) See sec. 76 of this Act, and notes thereto.

(*q*) See sec. 8 of this Act, and notes thereto.

(*r*) It is by sec. 71 declared that the County Council, *before imposing* any rate, and not later than the first day of July, shall examine the rolls of the several local Municipalities, in order to equalize them for the current year, so as to bear a just relation to each other. Here it is declared that in *apportioning* a County rate among the different local Municipalities, the amount of property returned on the rolls or reported by the valuators as finally revised and equalized *for the preceding year*, shall be the basis of apportionment. (See *McCormick* v. *Oakley*, 17 U. C. Q. B. 345.)

(*s*) The apportionment of a County rate must be on the basis of the rolls as finally revised and equalized for the preceding financial year. (Sec. 74.) In the case of a new Municipality erected during the current year, it is plain there can be no such roll. But in order that the direction of the statute may be, as nearly as possible under the circumstances, carried out, it is by this section made the duty of

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County councils to apportion sums required for county purposes.

**76.** When a sum is to be levied for County purposes, or by the County for the purposes of a particular locality, the Council of the County shall ascertain, and by by-law direct, what portion of such sum shall be levied in each Township, Town or Village in such County or locality. (*t*)

County clerk to certify amounts to clerks of local municipalities.

**77.** The County Clerk shall, before the fifteenth day of August in each year, (*u*) certify to the Clerk of each Municipality in the County the total amount which has been so

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the County Council, by examining the rolls of the former Municipality or Municipalities of which the new Municipality formed a part, to ascertain to the best of their judgment—

1. *What part* of the assessment of the Municipality or Municipalities had relation to the new Municipality;
2. And *what part* should continue to be accounted as one assessment of the original Municipality,

*so as* to apportion between them "their several shares of the County tax."

(*t*) The sum to be levied may be either for County purposes or for the purposes of a particular locality in the County. If the former, the rate must be levied as nearly as possible equally on each local Municipality in the County. (*Tylee* v. *Waterloo*, 9 U. C. Q. B. 575.) If the latter, it may be levied in the particular locality, without reference to other localities in the County. The By-law in *Tylee and Waterloo* enacted that the following sums should be levied and collected in the under-mentioned Townships and Incorporated Villages, viz.:

| | |
|---|---|
| Township of Arthur..... | £34 |
| Township of Bentinck..... | 22 |
| Town of Guelph ..... ..... | 153 |

—and so on, enumerating twenty-four different localities, and assigning to each a certain sum, ranging from £6 for the Township of Melancthon to £521 for the Township of Waterloo, and that these sums should be levied and collected in the different Municipalities, in accordance with the statute. In giving judgment, Sir J. B. Robinson said: "The last of the By-laws moved against is that of the 14th of June, 1851, which is clearly illegal; for by it the County Council assumes to rate certain Townships (*qr.* Municipalities?) for certain sums, without specifying in the body of the By-law for what purpose the money is required, or authorizing its appropriation to any purpose. Such a mode of taxing is clearly unauthorized by law. For any general purpose of the County, all the ratable property in the County must be assessed ratably, whether in one Township or another. If the Council had a discretion to tax in this manner, they might make one Township contribute £5 and another £500 to the same County objects, even where there was no inequality in the population and wealth of the Townships. It imposes no rate per pound, nor directs an equal rate to be assessed."

(*u*) *Before the fifteenth day of August*, &c. See note *h* to sec. 189 of the Municipal Institutions Act.

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directed to be levied therein for the then current year for County purposes, or for the purposes of any such locality, and the Clerk of the Municipality shall calculate and insert the same in the collector's roll for that year. (*v*)

Act not to affect provisions for rates to raise interest on county debentures.

**78.** Nothing in this Act contained shall alter or invalidate any special provisions for the collection of a rate for interest on County debentures, whether such provisions be contained in any Municipal Corporations Act heretofore or still in force in this Province, or any Act respecting the Consolidated Municipal Loan Fund in Upper Canada, or in any general or special Act authorizing the issue of debentures, or in any By-law of the County Council providing for the issue of the same. (*w*)

*Statute Labour.*

Persons in military service exempt

**79.** No person in Her Majesty's Naval or Military service, on full pay or on actual service, shall be liable to perform statute labour or to commute therefor; (*a*) nor shall any non-commissioned officer or private of the volunteer force, certified by the District Staff Officer as being an efficient volunteer; but this last exemption shall not apply to any volunteer who may be assessed for property. (*b*)

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(*v*) A duty is, by this section, cast upon the County Clerk as well as the Local Clerk. The former must certify *the amount* directed to be levied, and whether for County purposes or local purposes (see note *t* to sec. 76); and the latter, on receipt of the certificate, shall make *the necessary calculations* in order to ascertain the necessary rate, and insert the rate, when ascertained, in the collector's roll for the current year. The duty in each case is imperative. (See note *a* to sec. 90 of this Act; see further, note *h* to sec. 13 of this Act.)

(*w*) No special provision for the collection of a rate for interest on *County debentures* is to be interfered with, whether such provisions be contained:

1. In any Municipal Corporations Act heretofore or still in force in Upper Canada;
2. In any Act respecting the Consolidated Municipal Loan Fund in Upper Canada;
3. In any general or special Act authorizing the issue of debentures; *or*,
4. In any By-law of the County Council providing for the issue of the same.

See further, sec. 248 of the Municipal Institutions Act, and notes thereto.

(*a*) See note *i* to sub. 1 of sec. 390 of the Municipal Institutions Act.

(*b*) The latter part of this section was, by the Act of 1869, added to the corresponding section in the Act of 1866. Its object is to aid

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Who liable, and in what ratio in cities, towns and villages.

**80.** Every other male inhabitant of a City, Town or Village, of the age of twenty-one years and upwards, and under sixty years of age (and not otherwise exempted by law from performing statute labour), who has not been assessed upon the assessment roll of the City, Town or Village, or whose taxes do not amount to two dollars, shall, instead of such labour, be taxed at two dollars yearly therefor, to be levied and collected at such time, by such person, and in such manner as the Council of the Municipality shall by By-law direct, (*c*) and which person shall not be required to have any property qualification.

Where to be performed.

**81.** No person shall be exempt from the tax in the last preceding section named unless he shall produce a certificate of his having performed statute labour or paid the tax elsewhere. (*d*)

Liability of persons not otherwise assessed in townships.

**82.** Every male inhabitant of a Township, between the ages aforesaid, who is not otherwise assessed to any amount (and who is not exempt by law from performing statute labour), shall be liable to two days of statute labour on the roads and highways in the Township; and no Council shall have any power to reduce the statute labour required under this section. (*e*)

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in securing the efficiency of the volunteer force. No volunteer is to be entitled to the benefit of the section unless certified by the District Staff Officer to be "an *efficient* volunteer." But volunteers, like others having property, are bound to perform statute labour in respect of such property, or commute for the same.

(*c*) The *rule* is, that all male inhabitants of a City, Town or Village, of the age of twenty-one and upwards, and under sixty years of age, and not assessed upon the assessment roll of the City, Town or Village, or whose taxes, if assessed, do not amount to two dollars, shall, instead of statute labour, be taxed two dollars yearly.

The *exceptions* created by the preceding sections are:

1. Persons in Her Majesty's Naval or Military Service on full pay or on actual service.
2. Non-commissioned officers or privates of the volunteer force certified by the District Staff Officer to be efficient volunteers.

See further, note *i* to sub. 1 of sec. 390 of the Municipal Institutions Act.

(*d*) It would seem that a person exempt from assessment, who is improperly assessed, should appeal to the Court of Revision. The weight of authority appears to be in favour of the position that neglect to appeal subjects the party to taxation, although exempt. (See sec. 69 of this Act, and notes thereto.)

(*e*) See note *l* to sub. 3 of sec. 390 of the Municipal Institutions Act.

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Ratio of service in case of persons assessed.

**83.** Every person assessed upon the assessment roll of a Township shall, if his property is assessed at not more than three hundred dollars, be liable to two days' statute labour; at more than three hundred dollars, but not more than five hundred dollars, three days'; at more than five hundred dollars, but not more than seven hundred dollars, four days'; at more than seven hundred dollars, but not more than nine hundred dollars, five days'; and for every three hundred dollars over nine hundred dollars, or any fractional part thereof over one hundred and fifty dollars, one additional day; but the Council of any Township, by a By-law operating generally and ratably, may reduce or increase the number of days' labour to which all the parties rated on the assessment roll, or otherwise, shall be respectively liable, so that the number of days' labour to which each person is liable shall be in proportion to the amount at which he is assessed. (*f*)

Council may reduce or increase the number of days proportionately.

Lots subdivided as park lots, &c.

(2.) In Townships where farm lots have been subdivided into Park or Village lots, and the owners are not resident, and have not required their names to be entered on the assessment roll, (*g*) the statute labour shall be commuted by the Township Clerk in making out the list required under the ninety-second section of this Act, when such lots are under the value of two hundred dollars, to a rate not exceeding one-half per centum on the valuation, (*h*) but the Council may direct a less rate to be imposed by a general By-law affecting such Village lots. (*i*)

Commutation may be at $1 per day.

**84.** The Council of any Township [Town or Village] may by By-law direct that a sum not exceeding one dollar a day shall be paid as commutation of statute labour, in which case the commutation tax shall be added in a separate column in the collector's roll, and shall be collected and accounted for like other taxes. (*k*)

Commutation may be fixed at any sum not exceeding $1.

**85.** Any local Municipal Council may, by a By-law passed for that purpose, fix the rate at which parties may

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(*f*) See note *l* to sub. 3 of sec. 390 of the Municipal Institutions Act.

(*g*) See sec. 6 of this Act, and notes thereto.

(*h*) In the case of non-resident proprietors whose names do not appear on the roll, the charge is made against the lot of land, and not against the proprietor. (*Canada Co.* v. *Howard*, 9 U. C. Q. B. 654.)

(*i*) See note *l* to sub. 3 of sec. 390 of the Municipal Institutions Act.

(*k*) See note *l* to sub. 3 of sec. 390 of the Municipal Institutions Act. The words in brackets were added to the text of the section here annotated by statute 34 Vic. cap. 28, sec. 2, Ont.

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commute their statute labour, at any sum not exceeding one dollar for each day's labour, and the sum so fixed shall apply equally to residents who are subject to statute labour, and to non-residents in respect to their property. (*l*)

If no by-law, commutation to be at $1.

**86.** When no such By-law has been passed, the statute labour in the Townships [Towns or Villages] in respect of lands of non-residents, shall be commuted at the rate of one dollar for each day's labour. (*m*)

Payment of tax in lieu of statute labour may be enforced by distress or imprisonment.

**87.** Any person liable to pay the sum named in the eightieth section, or any sum for statute labour commuted under the eighty-fifth section of this Act, shall pay the same to the collector to be appointed to collect the same within two days after demand thereof by the said collector; and in case of neglect or refusal to pay the same, the collector may levy the same by distress of his goods and chattels, with costs of the distress, and if no sufficient distress can be found, then upon summary conviction before a Justice of the Peace of the County in which the local Municipality is situate, of his refusal or neglect to pay the said sum, and of there being no sufficient distress, he shall incur a penalty of five dollars with costs, and in default of payment at such time as the convicting Justice shall order, shall be committed to the common gaol of the County, and be there put to hard labour for any time not exceeding ten days, unless such penalty and costs and the costs of the warrant of commitment and of conveying the said person to gaol shall be sooner paid; (*n*) and any person liable to perform statute labour under the eighty-second section of this Act not commuted, shall perform the same when required so to do by the pathmaster or other officer of the Municipality appointed for the purpose; and in case of wilful neglect or refusal to perform such labour after six days' notice requiring him to do the same, shall incur a penalty of five dollars, and upon summary conviction thereof before a Justice of the

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(*l*) See note *l* to sub. 3 of sec. 390 of the Municipal Institutions Act.

(*m*) The words in brackets were added to the text of the section here annotated by statute 34 Vic. cap. 28, sec. 3, Ont.

(*n*) The eightieth section applies to inhabitants of *Cities*, *Towns* or *Villages* not otherwise assessed, or whose taxes do not amount yearly to $2. Statute labour as to these, after the demand made necessary by this section, may, it seems, be enforced without first summoning the defaulter or making any formal conviction. See note *m* to sub. 4 of sec. 390 of the Municipal Institutions Act.

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Peace aforesaid, such Justice shall order the same, together with the costs of prosecution and distress, to be levied by distress of the offender's goods and chattels, and in case there shall be no sufficient distress, such offender may be committed to the common gaol of the County, and there put to hard labour for any time not exceeding ten days, unless such penalty and costs and the costs of the warrant of the commitment, and of conveying the said person to gaol, shall be sooner paid; (*o*) and all sums and penalties, other than costs recovered under this section, shall be paid to the Treasurer of the local Municipality, and form part of the statute labour fund thereof.

Non-residents, when not admitted, to perform statute labour.

**88.** No non-resident who has not required his name to be entered on the roll, (*q*) shall be permitted to perform statute labour in respect of any land owned by him, but a commutation tax shall be charged against every separate lot or parcel according to its assessed value; (*r*) and in all cases when the statute labour of a non-resident is paid in money, the Municipal Council shall order the same to be expended in the statute labour division where the property is situate, or where the said statute labour tax is levied. (*s*)

When non-residents admitted but do not perform statute labour.

**89.** In case any non-resident, whose name has been entered on the resident roll, (*t*) does not perform his statute labour or pay commutation for the same, the overseer of the highways in whose division he is placed shall return him as a defaulter to the Clerk of the Municipality before the fifteenth day of August, and the Clerk shall, in that case, enter the commutation for statute labour against his name in the collector's roll; (*u*) and in all cases, both of residents and non-residents, the statute labour shall be rated and

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(*o*) The eighty-second section applies to inhabitants of *Townships* not otherwise assessed. The statute labour as to these may, it is believed, after the necessary demand, be enforced without a previous summons or warrant. (See note *m* to sub. 4 of sec. 390 of the Municipal Institutions Act.)

(*q*) See sec. 6, and notes thereto.

(*r*) See note *i* to sub. 1 of sec. 390 of the Municipal Institutions Act.

(*s*) The application of the money must be expended—

1. *Either* in the statute labour division where the property is situate; *or*,
2. Where the statute labour is levied.

(*t*) See sec. 6, and notes thereto.

(*u*) See sec. 91, and notes thereto.

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charged against every separate lot or parcel according to its assessed value; [Provided always, that whenever one person shall be assessed for lots or parts of several lots in one Municipality, not exceeding in the aggregate two hundred acres, the said part or parts shall be rated and charged for statute labour as if the same were one lot, and the statute labour shall be rated and charged against any excess of said parts in like manner;] but every resident shall have the right to perform his whole statute labour in the statute labour division in which his residence is situate, unless otherwise ordered by the Municipal Council. (*v*) (33 V. c. 27, s. 6.)

Amount of non-resident's statute labour.

*Collection of Rates.*

Clerk of the municipality to make out collector's rolls: their form, contents, &c.

**90.** The Clerk of every local Municipality shall make a collector's roll or rolls, as may be necessary, containing columns for all information required by this Act, to be entered by the collector therein, (*a*) on which he shall set down (*b*) the name in full of every person assessed, and the

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(*v*) The words in brackets are an amendment made to this section by statute 33 Vic. cap. 27, sec. 6. "The Assessment Act of 1869" placed the lands of residents and non-residents, as regards the performance of statute labour or payment of statute labour commutation, on the same footing. Such was the law before 1866. (*Canada Co.* v. *Howard*, 9 U. C. Q. B. 654.) But the Act of 1866 granted a privilege to non-residents which was not enjoyed by residents. The Act of 1869 destroyed it. The Act 33 Vic. cap. 27, sec. 6, to a great extent has restored the privilege.

(*a*) *The Clerk of every local Municipality shall*, &c. All the directions in this section are to the Clerk, and not to the Council. His authority in the matter is derived solely from the statute. With his duty, under this section, the Council of the Municipality has nothing whatever to do. The duty is a statutory obligation which the Clerk is bound to perform. (See *per* Mowat, V. C., in *Grier* v. *St. Vincent*, 13 Grant, 512, 519.)

(*b*) The duty of the Clerk under this section is—

1. To set down the name in full of every person assessed, and the assessed value of his real and personal property and taxable income.
2. To calculate, and opposite the said assessed value set down the *amounts* for which the party is chargeable.
3. To set down in *one* column, to be headed "County Rates," the amount for which the party is chargeable for any sum ordered to be levied by the Council of the County for County purposes.
4. To set down in *another* column, to be headed "Township," "Village," "Town" or "City" Rate, the amount for which the party is chargeable in respect of sums ordered to be levied by the Council of the local Municipality for the purposes thereof, or for the commutation of statute labour.

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assessed value of real and personal property and taxable income, as ascertained after the final revision of the assess-

5. To set down in *other* columns any special rate for collecting the interest upon debentures issued, or any local rate or school rate or other special rate, the proceeds of which are required by law, or by any By-law imposing it, to be kept distinct and accounted for separately.
6. To calculate such last-mentioned rates separately.
7. To head the columns therefor "Special Rate," "Local Rate," "School Rate," &c., as the case may be.

The statement of an aggregate amount where separate amounts are required to be stated would be no compliance with the statute, and the roll itself would be so far defective as to be no justification for a levy under it. (*Coleman* v. *Kerr*, 27 U. C. Q. B. 5, 13.) But if some of the rates be correctly stated, the distress will be so far legal, in the absence of a tender of the legal rates, that neither can the goods seized be replevied nor trespass maintained for the seizure. (*Squire* v. *Mooney*, 30 U.C.Q.B. 531; see also, *Corbett* v. *Johnston et al*, 11 U. C. C. P. 317.) In *Cook* v. *Jones*, 17 Grant, 488, 490, Spragge, C., said: "I think that though there are very good reasons for the provision in the statute, that they (the rates) should be kept separate, still the provision is only directory, and under *Connor* v. *Douglass*, 15 Grant, 456, the omission to keep them separate would not invalidate a sale for taxes. I say this assuming that the facts in this case are in favour of the objection. I am not satisfied, however, that this is the case, for the aggregate of the different columns which are set out separately agree with the column headed 'Total Taxes.'" A rate having been imposed for the purpose of building a new school house, certain persons in the Municipality, who were not Catholics, but Protestants, signed a notice to the Clerk (he being one of them), that as subscribers to the Roman Catholic separate school they claimed to be exempt from all rates for common schools for the year 1861; and the Clerk, in making up the roll, omitted this rate opposite to their names. Held, that the Clerk had acted illegally, and was liable to punishment. (*In re Ridsdale* v. *Brush*, 22 U. C. Q. B. 122.) Burns, J., in delivering judgment, said: "He (the Clerk) seems to have thought that he, as Clerk of the Municipality, had a right to omit on the collector's roll carrying out the rate to his own name and the [names of the] others who signed that notice. This is a clear violation of his duty as prescribed by the eighty-ninth and ninetieth sections of the Assessment Act, chapter fifty-five of the Consolidated Acts. When the Town Council passed the By-law authorizing the levying of such a sum as the school trustees required, it was the duty of the Clerk to calculate the rate that each person should pay, according to the assessed value of his property, and set the sum down on the collector's roll. Whether the individuals named in the collector's roll would be exempt from *payment* of any sum or rate mentioned in the roll depended upon something else, which the Clerk, in the discharge of his duty as far as making out the roll according to law, had nothing to do with." (*Ib.* 125.) But although the Court in this case held that the Clerk had acted illegally, in the present defective state of the law on this point they felt that they were powerless to grant any summary relief. Burns, J., said: "Mr.

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ments; and he shall calculate, and opposite the assessed value as therein described of each respective party, he shall set down in one column, to be headed "County Rates," the amount for which the party is chargeable for any sums ordered to be levied by the Council of the County for County purposes, and in another column, to be headed "Township," "Village," "Town," or "City Rate," the amount with which the party is chargeable in respect of sums ordered to be levied by the Council of the local Municipality for the purposes thereof, or for the commutation of statute labour, and in other columns any special rate for collecting the interest upon debentures issued, or any local rate or school rate or other special rate, the proceeds of which are required by law, or by the By-law imposing it, to be kept distinct and accounted for separately; and every such last-mentioned rate shall be calculated separately, and the column therefor headed "Special Rate," "Local Rate," "School Rate," as the case may be.

Provincial taxes to be assessed and collected in same manner as local rates.

**91.** All moneys assessed, levied and collected under any Act by which the same are made payable to the Receiver General of the late Province of Canada or to the Treasurer of this Province, or other public officer, for the public uses of the Province, or for any special purpose or use mentioned in the Act, shall be assessed, levied and collected in the same manner as local rates, and shall be similarly calculated upon the

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Brush's duty as Clerk of the Municipality ended when he completed the roll and placed it in the hands of the collector for the collection of the rate. We can nowhere find that it is laid down, either in the Assessment Act or in the Municipal Act, that it is the duty of the Clerk to certify either to the collector or to the Treasurer any errors which may have been made. There are provisions with respect to errors and mistakes made, and that the lands stated shall not exempt from the taxes by reason of the error or mistake; but we can find it nowhere stated to be a duty upon the Clerk of any Municipality to certify to any other person or authority when such error or mistake exists or has been made." (*Ib.* 126.) And again: "There is no difficulty in pronouncing that the Clerk, in this instance, did not discharge his duty according to law; but the difficulty consists in saying that we can, by *mandamus*, at this stage of the proceedings, order him to do anything which will have the effect of remedying the defective execution of his duty. After giving the matter much thought and consideration, we have arrived at the conclusion that we must discharge the rule for a *mandamus*." (*Ib.* 127.) The Clerk, when preparing the roll, ought not to insert in the column headed "County Rate" an allowance for the cost of collecting the County rate, and for abatements and losses which might occur in the collection of it. (See sec. 13 of this Act, and notes thereto.)

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assessments as finally revised, and shall be entered in the collector's rolls in separate columns, in the heading whereof shall be designated the purpose of the rate, (*c*) and the Clerk shall deliver the roll, certified under his hand, to the collector, on or before the first day of October, or such other day as may be prescribed by a By-law of the local Municipality. (*d*)

Clerk to make out rolls of lands of non-residents whose names are not in assessment rolls.

**92.** The Clerk of every local Municipality shall also make out a roll, (*e*) in which he shall enter the lands of non-residents whose names have not been set down in the assessor's roll, together with the value of every lot, part of lot, or parcel, as ascertained after the revision of the rolls, and he shall enter opposite to each lot or parcel all the rates or taxes with which the same is chargeable, in the same manner as is provided for the entry of rates and taxes upon the collector's roll, (*f*) and shall transmit the roll so made out, certified under his hand, to the Treasurer of the County in which his Municipality is situate, or to the City Cham-

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(*c*) The local machinery is the best adapted for the collection of taxes, and therefore is made available for more than local purposes. (See note *b* to sec. 90.)

(*d*) It is here made the duty of the Clerk to deliver the roll, certified under his hand, to the collector, on or before the first day of October, or such other day as may be prescribed by a By-law of the local Municipality. Unless the roll be *certified* as directed, the Clerk is not bound to act under it. (*Vienna* v. *Marr*, 9 U. C. L. J. 301.)

(*e*) It is the duty of the Clerk, under this section, to make out *two* rolls:

1. One whereon will appear *the names of all taxable parties*, and which is to be delivered to the local collector with a view to the collection of taxes from persons liable.
2. Another whereon will appear only *lands*, and which is to be transmitted to the County Treasurer with a view to the collection of taxes by means of a sale of the lands.

The reason is, that there is no power to enter the *names* of non-residents on any roll unless they require the same to be done. (See sec. 6, and notes thereto.)

(*f*) The non-residents' roll must show:

1. The lands of non-residents whose names have not been set down in the assessor's roll.
2. The value of every lot, part of lot, or parcel.
3. All the rates or taxes with which the same is chargeable.

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berlain, as the case may be, (*g*) on or before the first day of November. (*h*)

*Collectors and their Duties.*

Duties of collectors.

**93.** The collector, upon receiving his collection roll, shall proceed to collect the taxes therein mentioned. (*i*)

To demand the payment of rates.

**94.** He shall call at least once on the person taxed, or at the place of his usual residence or domicile, or place of business, if within the local Municipality in and for which such collector has been appointed, and shall demand payment of the taxes payable by such person, (*k*) and shall, at the time of

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(*g*) *Not* like the roll mentioned in the preceding section (sec. 91), because on the non-resident land roll there cannot legally be the names of any persons on whom the collector can or may call for payment of taxes.

(*h*) The Treasurer would not, it is apprehended, be bound to accept the roll unless certified as directed. (See note *d* to sec. 91.) But the neglect of the Clerk either to transmit the copy directed, or his transmission of it in an imperfect form, would not invalidate a sale of non-resident land for taxes. (*Allan* v. *Fisher*, 13 U. C. C. P. 63.)

(*i*) The collector is to proceed to collect the taxes—that is, the money due in respect of taxes. He has no right to accept promissory notes or securities of any kind in lieu of money. The acceptance of such a security could in no way interfere with the right to distrain. (See *Spry* v. *McKenzie*, 18 U. C. Q. B. 161.) Where a collector is charged with the collection of taxes for several years consecutively, he has the right to apply money made or money paid for taxes to the taxes in arrear during the first of the years. (*McBride* v. *Gardham*, 8 U. C. C. P. 296.) It is, among other things, the duty of the collector, upon receipt of his roll, to call upon the person charged (sec. 94), and if taxes not paid, to levy therefor (sec. 97), and for that purpose make diligent enquiry to discover sufficient goods and chattels belonging to or in possession of the person charged, whereon a levy may be made. (Secs. 96, 106.) If none can be found after diligent search, the collector may relieve himself by oath from further accountability in regard to taxes unpaid. (Sec. 106.)

(*k*) The demand is essential to the validity of subsequent proceedings authorized by the statute. (*Campbell* v. *Elma*, 13 U. C. C. P. 296; see, however, as to non-resident land, *De Blaquiere* v. *Becker et al*, 8 U. C. C. P. 167.) It must, it is presumed, be made by the collector himself, for it is said—"*he* shall call at least once," &c. Apparently it need not be made personally of the person liable to pay, for it is said the call is to be "on the person taxed, *or* at the place of his usual residence or domicile, *or* place of business, if within the local Municipality." So that a demand made of some person at the place of residence, domicile or place of business of the party liable would, it seems, be sufficient. (*Ib.*) The distress cannot be made for fourteen days after the demand. (Sec. 95.) If the demand be legally made upon the person taxed, no subsequent

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such demand, enter the date thereof on his collection roll opposite the name of the person taxed, and such entry shall be *prima facie* evidence of such demand. (*l*)

When payment be not made, collectors to levy the tax by distress and sale.

**95.** In case any person neglects to pay his taxes for fourteen days after such demand as aforesaid, (*m*) the collector may, by himself or by his agent, (*n*) levy the same

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demand, in the event of change of occupation, is necessary to enable the collector to distrain the goods of the subsequent occupant. (*Anglin* v. *Minis*, 18 U. C. C. P. 170.) And *per* Wilson, J.: "If the collector be required to make a fresh demand fourteen days before he can distrain, upon every change of ownership or occupancy, he may be baffled for ever. Besides, he cannot tell whether there has been a change of ownership or not, though he might be better able to know of a change of occupancy." (*Ib.* 178.) But the person in possession, whether the person assessed or not, may be looked upon as the person "who ought to pay the taxes," so as to make a demand on him sufficient without showing a demand on the person assessed. (See note *q* to sec. 95 of this Act.)

(*l*) This is a most important provision. Without it, the entry certainly would not be evidence of the demand in the lifetime of the collector. (See *Barton* v. *Dundas*, 24 U. C. Q. B. 273.) But with it, the bare fact of the entry appearing on the production of the roll is evidence of the *fact* of the demand, and, it is believed, *the date* of the demand. There was no such provision in the Act of 1866. It first appeared in the "Assessment Act of 1869." (See further, note *p* to sec. 102, and note *s* to sec. 103 of this Act.)

(*m*) *As aforesaid.* See note *k* to sec. 94. It would seem that the notice required by sec. 49 is also a condition precedent to the right of distress, in the case of a person whose name is on the roll. (*London* v. *The Great Western Railway Co.*, 16 U. C. Q. B. 500.)

(*n*) The collectors of taxes are officers annually appointed to collect the taxes, which, in far the greater number of instances, they are able to do by merely calling upon those against whom they are charged. In cases where they may have to resort to compulsory measures, although the Legislature has enabled them to levy in person and without the authority of any process, yet it was scarcely contemplated that the collectors themselves would, as a matter of course, act the part of bailiffs and auctioneers in seizing and selling. (*Per* Robinson, C. J., in *Fraser* v. *Page et al*, 18 U. C. Q. B. 336; see also, *Newberry* v. *Stephens*, 16 U. C. Q. B. 69.) So that while power is given to the collector by himself to levy, it is also said he may by his agent levy. But when a bailiff or agent is appointed, he ought, strictly speaking, to receive a warrant, which may be in the following form:

CITY OF ——, to wit. } To A. B., my Bailiff.

You are hereby authorized and required to distrain the goods and chattels of C. D. of, &c., which you shall find on the premises of the said C. D. at, &c., or any goods and chattels in his possession, wherever the same may be found within the County of, &c., for the sum of, &c., rated against him for taxes on the collector's roll of,



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with costs, (*o*) by distress of the goods and chattels (*p*) of the person who ought to pay the same, (*q*) or of any goods

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&c., for the year, &c., and now in arrear and unpaid, and in default of payment of such arrears of taxes and the lawful costs of the said distress, to sell and dispose of the said distress according to law, for the recovery of the said arrears of taxes together with the said costs, and for your so doing this shall be your sufficient authority.

. Given under my hand at, &c., this —— day of ——, A. D. 187—.

E. F., *Collector.*

Of course the collector would be liable for anything done by the bailiff, which he had authorized the bailiff to do. (*Corbett* v. *Johnston et al*, 11 U. C. C. P. 317; s. c. 7 U. C. L. J. 319.) Whether he would, like a sheriff, be liable for anything done by the bailiff, without the authority of or contrary to the direction of the warrant, is a question which has never yet been determined. The late Chief Justice McLean was of opinion in the affirmative, but the late Sir John Robinson expressed grave doubts on the question. (See *Fraser* v. *Page et al*, 18 U. C. Q. B. 336, 338.) If there be several rates, the legal separable from the illegal rates, unless the sums due in respect of the legal rates be paid or tendered, an action of replevin or trespass will not lie. (See note *b* to sec. 90 of this Act.) Should the person distrained upon, by his own misconduct, prevent the distress from being realized, it would seem that a second distress may be lawfully made. (*Lee* v. *Cooke*, 3 H. & N. 203.)

(*o*) *With costs.* Until this Act became law, there was no scale or tariff of costs (see *Murray* v. *McNair*, 2 Local Courts Gazette, 14), but now it is provided that "the costs chargeable shall be those payable to bailiffs under the Division Courts Act." (Sec. 96.)

(*p*) A planing machine standing by its own weight on the floor, without fastening, with belts and an engine to work it, has been held to be a chattel liable to seizure for taxes. (*Hope et al* v. *Cumming*, 10 U. C. C. P. 118.) So an engine and boiler detached from the freehold by a fire, have been held to be chattels. (*Walton et al* v. *Jarvis*, 14 U. C. Q. B. 640.) So temporary floors, scantling, partitions, presses, shafting, vats, cocks, and other such things. (*Hughes et al* v. *Towers*, 16 U. C. C. P. 287.) So machinery of different kinds detached from the freehold (*Carscallen* v. *Moodie*, 15 U. C. Q. B. 304), unless perhaps for a temporary purpose, with the intention of again replacing it in its former position. (*Grant* v. *Wilson et al*, 17 U. C. Q. B. 144; see also, *The Great Western Railway Co.* v. *Bain*, 15 U. C. C. P. 207.)

(*q*) What is the meaning of the expression "who ought to pay the same?" Is it to be considered with reference to the time during which it may be said the collector's roll is in force for each year's taxes? or is it to be understood as extending to any length of time and to any person who may happen at the time of the distress to be in possession? The former appears to be the proper construction of the Act according to *Holcomb* v. *Shaw*, 22 U. C. Q. B. 92; *Smith* v. *Shaw*, 8 U. C. L. J. 297. But the latter would seem to be sanctioned by *Anglin* v. *Minis*, 18 U. C. C. P. 170; *Squire* v. *Mooney*, 30 U. C. Q. B. 531; see further, *The Plumstead Board of Works* v. *Ingoldby et al*, L. R. 8 Ex. 63; s. c. *Ib.* 174, in appeal.

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or chattels in his possession, wherever the same may be found within the County in which the local Municipality lies, (*r*) or of any goods or chattels found on the premises, the property of, or in the possession of, any other occupant of the premises; (*s*) and the costs chargeable shall be those payable to bailiffs under the Division Courts Act. (*t*)

Proceedings in case of non-residents.

**96.** If any person whose name appears on the roll be not resident within the Municipality, the collector shall transmit to him by post, addressed in accordance with the notice given by such non-resident, if notice has been given, a statement and demand of the taxes charged against him in the roll, (*a*) and shall, at the time of such transmission, enter

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(*r*) It is evident the Legislature intend the taxes to be paid in some way, and think it better to make *any* goods in the possession of the party, whether belonging to himself or not, liable, without doubt, for the taxes, than that the collector should be at the risk and expense of contesting title with every one who might claim title to the goods seized. (*Per* Burns, J., in *Fraser* v. *Paye et al*, 18 U. C. Q. B. 340.) If the distress be made on the goods and chattels of the person "who ought to pay the taxes," it may be made on his goods and chattels in his possession, although not on the assessed premises, provided made within the County. (*Anglin* v. *Minis*, 18 U. C. C. P. 170, 179.) By an agreement between the Great Western Railway Co. and the Erie and Niagara Railway Co., the former were working the latter line of railway with their own engines and cars, and the defendant, as collector, seized one of such cars on the line of railway for taxes due by the Erie and Niagara Railway Co. in respect of other land belonging to the Company. Held, that the seizure was illegal, for the car, when taken, was in the possession of the Great Western Railway Co. and their own property. (*Great Western Railway Co.* v. *Rogers*, 29 U. C. Q. B. 245.) No action will lie against a collector or bailiff for distraining the goods of a stranger without necessity, upon the allegation that there were goods enough of the person assessed to pay the taxes to satisfy the demand. (*McEtheron* v. *Menzies*, 7 U. C. L. J. 244.)

(*s*) See note *q* to this section.

(*t*) See note *o* to this section.

(*a*) When the collector proceeds to enforce payment, he is to deal with those whose names appear on the roll. If they are *within* the Municipality, he is to call upon them, or at their residence or place of business, and demand payment. (See note *k* to sec. 94.) If they are *without* the Municipality, he is, under this section, to transmit to them by post a statement of the taxes charged against them on the roll, and demand payment. In *Anglin* v. *Minis*, 18 U. C. C. P. 170, 175, Mr. Justice Wilson said: "This last provision as to not being within the Municipality applies, I think, as well to the owners of non-resident lands who have requested to be assessed, as to the persons who were residents at the time the assessment was made, and who were assessed as owners or occupants, but who have since removed from the Municipality." *Anglin* v. *Minis* was decided under the

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the date thereof on the roll opposite the name of such person, and such entry shall be *prima facie* evidence of such transmission and of the time thereof. (*b*)

When collectors may distrain for rates on non-residents' land.

**97.** In case of the land of non-residents who have required their names to be entered on the roll, the collector, after one month from the date of the delivery of the roll to him, and after fourteen days from the time such demand as aforesaid has been transmitted to him by post, (*c*) may make distress of any goods and chattels (*d*) which he may find upon the land; (*e*) and no claim of property, lien or privilege shall be available to prevent the sale or the payment of the taxes and costs out of the proceeds thereof. (*ee*)

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Consolidated Statute, cap. 55. Section 95 of that Act had not the words "addressed in accordance with the notice given by such non-resident, if notice has been given." These words first appeared in the section of the Act here annotated. Their introduction shows that the section now beyond question applies to non-resident owners who have requested to be assessed.

(*b*) See note *l* to sec. 94 of this Act.

(*c*) In the case of non-residents, the transmission of the statement and demand, under the 16 Vic. cap. 182, was held not to be a condition precedent to the power of distress. (*De Blaquiere* v. *Becker et al*, 8 U. C. C. P. 167.) But now it is clear, under this section, that the demand or statement is a condition precedent to the distress. (See note *k* to sec. 94 of this Act.)

(*d*) *Goods and chattels.* See note *p* to sec. 95 of this Act.

(*e*) The collector has no legal power to go out of his County for the purpose of making a distress. He may under section 95 make a distress of the goods and chattels of the person who ought to pay the taxes in his possession wherever the same may be found in the County within which the local Municipality lies. (See sec. 95.) But in the case of a non-resident the power of distress is only as to such goods and chattels *which he may find upon the land.* Any goods found upon the land, whether belonging to the party who ought to pay the taxes or to a stranger, are liable to be so distrained. (See note *r* to sec. 95 of this Act.)

(*ee*) It is very probable that under these words a distress by a collector for taxes would supersede a prior seizure by the sheriff under execution. (*Adshead* v. *Grant*, 4 P. R. 121.) But a mere notice by the collector to the sheriff of the amount due for taxes is not a distress so as to supersede the prior claim of the sheriff under this section. (*Ib.*) In the absence of a *distress*, the execution creditor is entitled to the entire proceeds of the sale, to the exclusion of the tax collector. (*Ib.*) Chattels in possession of a receiver of the Court of Chancery were seized and sold by a bailiff for taxes. Neither the bailiff nor the purchaser was aware until after the completion of the sale that the property was in the receiver's possession, or was intended to be affected by the order appointing a receiver, and both had been informed to the contrary in good faith by the party in charge. Held, that the sale was valid. (*Gibson* v. *Lovell*, 19 Grant,

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Public notice of sale to be given, and in what manner.

**98.** The collector shall, by advertisement posted up in at least three public places in the Township, Village or Ward wherein the sale of the goods and chattels distrained is to be made, give at least six days' (*f*) public notice of the time and place of such sale, and of the name of the person whose property is to be sold; (*g*) and at the time named in the notice, the collector or his agent shall sell at public auction the goods and chattels distrained, or so much thereof as may be necessary. (*h*)

Surplus, if unclaimed, to be paid to the party in whose possession the goods were.

**99.** If the property distrained has been sold for more than the amount of the taxes and costs, and if no claim to

197.) In delivering judgment, Mowat, V. C., said: "The principal ground of objection to Mr. Bacon's (the purchaser) claim was that the sale was void in equity by reason of the property having been in the custody of the Court through the receiver at the time of the sale. The answer to this objection is, neither the purchaser nor even the bailiff was informed of this until after the sale was completed. On the contrary, they had been expressly told, on what might well seem to them to be competent authority, that the engine and boiler (the goods and chattels sold) were not affected by the Chancery proceedings, and were not in the possession of the receiver." (*Ib.* 202.) And again: "No doubt, if the Court had been applied to before the sale, the bailiff's proceedings would have been restrained and nullified, because the Court does not permit any interference with property in the hands of its officers without the leave of the Court. But such leave, if asked for in the present case, would have been granted at once, unless the parties were prepared with the money. The knowledge of that was probably one reason why the plaintiff or her son did not apply to the Court before the sale." (*Ib.* 203.) The establishment in which these chattels were, being afterwards sold by the order of the Court in one lot as a going concern, it was held that the purchaser of such chattels at the tax sale was entitled to a corresponding part of the purchase money realized at the Chancery sale. (*Ib.*)

(*f*) At *least* six days', &c. See note *g* to sec. 105 of the Municipal Institutions Act.

(*g*) Errors or defects in the advertisement of sale would not, it is believed, affect the title of the purchaser to the goods and chattels by him purchased at the collector's sale. (See *Jarvis* v. *Cayley*, 11 U. C. Q. B. 282; *Paterson* v. *Todd*, 24 U. C. Q. B. 296; *Haslitt* v. *Hall*, *Ib.* 484; *Lee* v. *Howes*, 30 U. C. Q. B. 292; *Connor* v. *Douglas*, 15 Grant, 456; *Gibson* v. *Lovell*, 19 Grant, 197.

(*h*) The collector, after sale, would, it is apprehended, be in a position to sue the purchasers for the price of the things sold. (See *Jarvis* v. *Cayley*, 11 U. C. Q. B. 282.) But in order to bind the collector as against the purchaser, there should probably be some memorandum in writing on delivery of the goods sold, so as to bind the sale. (See *Mingaye* v. *Corbett*, 14 U. C. C. P. 557.) It is not necessary for the purchaser, in order to the maintenance of his title, to show a strict and literal compliance by the bailiff with the directions of the Act. (*Gibson* v. *Lovell*, 19 Grant, 197.)

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the surplus be made by any other person, on the ground that the property sold belonged to him, or that he was entitled by lien or other right to the surplus, (*i*) such surplus shall be returned to the person in whose possession the property was when the distress was made. (*k*)

Or to admitted claimant.

**100.** If any such claim be made by the person for whose taxes the property was distrained, (*l*) and the claim is admitted, the surplus shall be paid to the claimant. (*m*)

When the right to such surplus contested.

**101.** If the claim is contested, such surplus money shall be paid over by the collector to the Treasurer or Chamberlain of the local Municipality, who shall retain the same until the respective rights of the parties have been determined by action at law or otherwise. (*n*)

Taxes not otherwise recoverable to be recovered by action.

**102.** If the taxes payable by any person cannot be recovered in any special manner provided by this Act, they may be recovered with interest and costs, as a debt due to the local Municipality; (*o*) in which case the production of

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(*i*) The goods and chattels of *any* person in the possession of the person who ought to pay the taxes (sec. 95), or *any* goods on the land of a non-resident who has required his name to be entered on the roll (sec. 97), may be distrained and sold for taxes; but if a surplus, that surplus, if the goods and chattels were really not the property of the person for whose taxes they were sold, must belong to the owner of the goods and chattels so sold. It is hard that any part of his goods should be sold to pay the liability of another, with whom he has no privity, but it would be still more hard if he could not claim any surplus that might be left after payment of the arrears of taxes and costs.

(*k*) The receipt of the surplus by the owner of the goods would not, unless accepted in satisfaction, be any condonation, so as to prevent an action being brought to recover the value of the goods if the sale were from any cause illegal. (See *Evans* v. *Wright*, 2 H. & N. 527; *Robinson* v. *Shields*, 15 U. C. C. P. 386.)

(*l*) See note *i* to sec. 99 of this Act.

(*m*) If the claim be disputed, the collector may pay over the money to the Treasurer or Chamberlain of the local Municipality, who may retain the same until the rights of the parties have been determined by action at law or otherwise. (Sec. 101.)

(*n*) It is not said that the collector, on payment of the money to the Treasurer or Chamberlain, would be thereby discharged or relieved from acting at the suit of the rival claimants, or either of them—but such is the fair intendment of the section; and where the sale itself is legal, such would probably be the construction put upon the section by the Courts.

(*o*) The right to sue for taxes is, apparently, only given when the taxes "cannot be recovered in any special manner provided by this Act,"—such as distress and sale in the case of resident taxpayers,

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a copy of so much of the collector's roll as relates to the taxes payable by such person, purporting to be certified as a true copy by the Clerk of the local Municipality, shall be *prima facie* evidence of the debt. (*p*)

Collector to return his roll and pay over proceeds by the day to be appointed by council.

**103.** On or before the fourteenth day of December in every year, or on such day in the next year not later than the first of February, as the Council of the Municipality may appoint, every collector shall return his roll to the Treasurer or Chamberlain, (*q*) and shall pay over the amount payable to

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and sale of lands in the case of non-resident proprietors who have requested their names to be put on the roll. (*Berlin* v. *Grange*, 5 U. C. C. P. 211.) In order to entitle a Municipal Corporation to sue for a tax imposed in the ordinary manner upon resident ratepayers, the Corporation must be able to show, in the first place, that the defendant's name is on the roll (see *Sargant* v. *Toronto*, 12 U. C. C. P. 185; *McCarrall* v. *Watkins*, 19 U. C. Q. B. 248), and, in the next place, that they have done what would be necessary to entitle them to distrain by warrant for the same tax, if the person sued had goods that might be seized, except perhaps there would be no occasion to make the previous demand mentioned in section 94 (*per* Robinson, C. J., in *London* v. *The Great Western Railway Co.*, 16 U. C. Q. B. 502); and neither by distress nor by action can a ratepayer be compelled to pay a tax of which such notice has not been given to him as the law has provided in the 48th section of this Act. (*Ib.*) By this is not meant that the plaintiffs in such an action are bound to set forth in the declaration that they have given such notice as the law requires before the assessment roll was finally completed—that may perhaps be assumed till the contrary is shown—but it must be open to the defendant to deny that such notice was given, and to put plaintiffs to the proof of it. (*Ib.*) In order to entitle the Corporation to sue a non-resident owner of lands, it must not only appear that the special remedies provided by the Act are unavailable, and that the defendant's name is on the roll, but, besides, it must be distinctly averred and proved that the owner had requested his name to be placed on the roll. (*Berlin* v. *Grange*, 1 Er. & Ap. 279.)

(*p*) The former part of the section provides for the action, and this part for the evidence to sustain it. The *production* of a copy of *so much* of the collector's roll as relates to the taxes payable by such person, *purporting* to be certified as a true copy by the Clerk of the local Municipality, shall be *prima facie* evidence of the debt. No proof of the signature of the Clerk is apparently made necessary. If the certificate produced purports to be signed by him, it will be received on production. But when received, it is only *prima facie* evidence; in other words, its accuracy, or the facts it represents, may be disputed and disproved. (See *Hesketh* v. *Ward*, 17 U. C. C. P. 190.)

(*q*) It is the duty of the collector, under this section, on or before a day named or appointed for the purpose, not later than the 1st of February (33 Vic. cap. 27, sec. 7, Ont.; see also note *h* to sec. 189 of the Municipal Institutions Act), to return his roll, and pay over the amount payable, specifying in a separate column on his roll how

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such Treasurer or Chamberlain, specifying in a separate column on his roll how much of the whole amount paid over is on account of each separate rate; (*r*) and shall make oath before the Treasurer or Chamberlain that the date of the demand of payment and transmission of statement, and

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much of the whole amount is paid over on account of each separate rate. Does the collector at any time, and if so, when, become incapable of exercising his functions as collector? Suppose the Municipal Council does not extend the time beyond the 14th of December, does he on that day become *functus officio?* No doubt he may receive moneys on account of taxes after that day, provided he has not made his return, and no doubt his sureties would be liable for moneys so received. (*Whitby* v. *Harrison*, 18 U. C. Q. B. 606; *Todd* v. *Perry et al*, 20 U. C. Q. B. 649.) But whether he may exercise the *compulsory powers* with which he is invested, is another question. The enactments which provide for the appointment of collectors (see sec. 199 of the Municipal Institutions Act, and secs. 19 and 20 of this Act) contain no limitation as to the time they shall hold office; and it is declared by sec. 220 of the Municipal Act, that all officers appointed by a Council shall hold office until removed by the Council. (See *Beverley* v. *Barlow et al*, 7 U. C. L. J. 117; *In re McPherson and Beeman*, 17 U. C. Q. B. 99.) The better opinion seems to be, that the collector does not become *functus officio* so long as he holds the office, and so long as his roll is not returned; in other words, that his authority to collect taxes on the roll is co-extensive with the term of his office, provided in the interval he has not returned his roll. The different provisions for the enlargement of the time for his making his return are in favour of the collector, and provisionally in favour of the ratepayers. This was the opinion of Robinson, C. J., and Burns, J. (McLean, J., *dissentiente*), in *Newberry* v. *Stephens*, 16 U. C. Q. B. 65, and was in fact the decision of the Court in that case, since recognized in *McBride* v. *Gardham*, 8 U. C. C. P. 296; and *McLean* v. *Farrell*, 21 U. C. Q. B. 441. In *Coleman* v. *Kerr*, 27 U. C. Q. B. 5, Draper, C. J., said: "The Court acted upon *Newberry* v. *Stephens*, or at least in accordance with its principle, in *The Chief Superintendent of Schools* v. *Farrell*, 21 U. C. Q. B. 441; and the Court of Common Pleas recognized its authority in *McBride* v. *Gardham*, 8 C. P. 296. On these authorities we think this objection (the right to distrain after time fixed for return of the roll) is untenable."

(*r*) If a collector refuse or neglect to pay to the proper Treasurer or Chamberlain, or other person authorized to receive the same, the sums contained on his roll, or duly account for the same as uncollected, then not only may the ordinary remedy by action against his sureties be applied, but the Treasurer or Chamberlain may, within twenty days after the time the payment ought to have been made, issue a warrant under his hand and seal, directed to the Sheriff of the County or High Bailiff of the City (as the case may be), commanding him to levy of the goods and chattels, lands and tenements of the collector and his sureties, such sum as remains unpaid and unaccounted for, with costs, and to pay to the Treasurer or Chamberlain the sum so unaccounted for, and to return the warrant within forty days after the date thereof. (Sec. 181.)

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demand of taxes required by sections ninety-four and ninety-six, in each case has been truly stated by him in the roll. (*s*) (33 V. c. 27, s. 7.)

Other persons may be employed to collect taxes which the collector does not collect by a certain day.

**104.** In case the collector fails or omits to collect the taxes, or any portion thereof, by the day appointed or to be appointed as in the last preceding section mentioned, the Council of the City, Town, Village or Township may, by resolution, authorize the collector, or some other person in his stead, to continue the levy and collection of the unpaid taxes in the manner and with the powers provided by law for the general levy and collection of taxes, (*t*) but no such resolution or authority shall alter or affect the duty of the collector to return his roll, or shall in any manner whatsoever invalidate or otherwise affect the liability of the collector or his sureties. (*u*)

Proceedings when taxes are unpaid and cannot be collected.

**105.** If any of the taxes mentioned in the collector's roll remain unpaid, and the collector be not able to collect the same, he shall deliver to the Chamberlain or Treasurer of his Municipality an account of all the taxes remaining due on the roll; and in such account the collector shall show, opposite to each assessment, the reason why he could not collect the same, by inserting in each case the words "non-resident" or "not sufficient property to distrain," as the case may be. (*a*)

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(*s*) The latter part of this section first appeared in the Assessment Act of 1869. As the entries to which reference is made are constituted evidence on their production, the oath here required is intended to be a guarantee for the truthfulness of the entries.

(*t*) This section is intended to give the Council power, by resolution, to authorize the same collector, or any other person in his stead, *to continue* collections which are being made, but not completed, at the time appointed for the return of the collector's roll. The power, however, cannot be exercised *after the final return of the roll* by the collector, and after the lapse of several years. (*Holcomb* v. *Shaw*, 22 U. C. Q. B. 92; *Smith* v. *Shaw*, 8 U. C. L. J. 297.) But the land is not thereby excused; the arrears of taxes are a special lien on the land. (Sec. 107.)

(*u*) See sec. 103 of this Act, and notes thereto.

(*a*) It is the duty of the collector to return his roll by a day named or appointed for the purpose. (Sec. 103.) It is also his duty under the section here annotated, when unable to collect any taxes, to deliver an account of all taxes remaining due on the roll, and in such account he is required to show the reason why he could not collect the same. If he fail in the performance of these duties, proceedings by action may be had against himself, or his sureties and himself; proceedings also of a very summary character. (See sec. 181.) If these remedies be of no avail, and not till then, a court of law may interfere

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When thus not collected collectors to be credited with the amount.

**106.** Upon making oath before the Treasurer or Chamberlain that the sums mentioned in such account remain unpaid, and that he has not, upon diligent enquiry, been able to discover sufficient goods or chattels belonging to or in possession of the parties charged with or liable to pay such sums, or on the premises belonging to or in the possession of any occupant thereof, whereon he could levy the same, or any part thereof, the collector shall be credited with the amount not realized. (*b*)

Taxes to be a lien upon land.

**107.** The taxes accrued on any land shall be a special lien on such land, having preference over any claim, lien, privilege or incumbrance of any party except the Crown, and shall not require registration to preserve it. (*c*)

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by *mandamus*. (*In re Quin and the Treasurer of the Town of Dundas*, 23 U. C. Q. B. 308.)

(*b*) This appears to intend that the proper course is, for the Municipal Council in the first instance to debit the collector with all the taxes on his roll, and from time to time, as he pays over moneys, credit him therewith, until he finds himself unable to collect the balance, and then accept from him the oath here required, and credit him with the amount not realized, so as to close the account.

(*c*) The effect of this provision will make it necessary for every intending purchaser to search not only the Register Office for deeds or conveyances affecting land, but the office of the County or other Treasurer who would be able to give information as to the taxes, if any, due upon it. (See remarks of Burns, J., in *Holcomb et al* v. *Shaw*, 22 U. C. Q. B. 104.) But apparently it is no part of an attorney or solicitor's duty, under an ordinary retainer, for the investigation of title, to make such a search. (*Ross* v. *Strathy*, 16 U. C. Q. B. 430.) The lien is not only made special, but one having preference over any claim, lien, privilege or incumbrance of any party except the Crown; but even in the case of the Crown, if the lien have attached before the Crown became the owners of the land, the lien holds as against the Crown. (*Per* Adam Wilson, J., in *Secretary of War* v. *Toronto*, 22 U. C. Q. B. 555.) Taxes due upon land at the time of sale are an incumbrance within the covenant for quiet enjoyment. (*Haynes* v. *Smith*, 11 U. C. Q. B. 57; *Harry* v. *Anderson*, 13 U. C. C. P. 476.) But where the vendee of land subject to taxes allows it to be sold for the taxes, and afterwards neglects to redeem, he cannot as of right recover damages to the full value of the land. (*McCollum* v. *Davis*, 8 U. C. Q. B. 150.) Taxes cannot be said to be due before they are imposed by the Council. (*Ford* v. *Proudfoot*, 9 Grant, 478; *Corbett* v. *Taylor*, 23 U. C. Q. B. 454.) In the case of residents, taxes are not due till the collector has received his roll (*Ib.*), and not until the expiration of fourteen days after demand (*per* Wilson, J., in *Bell* v. *McLean*, 18 U. C. C. P. 421); and in the case of non-residents who have required their names to be entered on the roll, not until one month after the collector has returned his roll. (*Ib.*) Sewerage rate is not an incumbrance on land. (*Moore* v. *Hynes*, 22 U. C. Q. B. 107; see further, note *o* to sec. 18, and notes to sec. 128 of this Act.)

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*Yearly Lists of Lands granted by the Crown.*

Annual list of lands granted, &c., to be furnished by commissioner of crown lands.

**108.** The Commissioner of Crown Lands shall, in the month of February in every year, transmit to the Treasurer of every County, a list of all the land within the County, located as free grants, sold or agreed to be sold by the Crown, or leased, or in respect of which a license of occupation issued during the preceding year. (*d*)

County treasurers to furnish copies of lists to clerks of municipalities.

**109.** The County Treasurer shall furnish to the Clerk of each local Municipality in the County a copy of the said lists, as far as regards lands in such Municipality, and such Clerk shall furnish the assessors, respectively, a statement showing what lands in the said annual list are liable to assessment within such assessor's assessment district. (*e*)

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(*d*) All land in Upper Canada, subject to certain exceptions, is liable to Municipal taxation. (Sec. 9.)

One of these exceptions is, all property vested in or held by Her Majesty. (Sub. 1.)

This exception, however, is qualified by a declaration that when any such property is occupied by any person otherwise than in an official capacity, the occupant shall be assessed in respect thereof, but the property itself shall not be liable. (*Ib.* sub. 2.)

Unpatented land, sold or agreed to be sold to any person, or located as a free grant, so far as the interest of the purchaser or locatee is concerned, is made liable to taxation. (Sec. 127.)

For the purposes of assessment, the motive for requiring a return to the Treasurers of Counties of lands located as free grants, sold or agreed to be sold or leased by the Crown, or in respect of which a license of occupation has issued, is self-evident. (*Per* Draper, C. J., in *Street* v. *Kent*, 11 U.C.C.P. 260.) When *Street* v. *Kent* was decided, the assessment law had not been extended to lands "sold or agreed to be sold." That was done by the statute 27 Vic. cap. 19, secs. 9, 10, 11, which has been embodied in the section under consideration. (See *Street* v. *Simcoe*, 12 U. C. C. P. 284; *Street* v. *Lambton*, *Ib.* 294.) Under the old law, the Surveyor's general schedule was the foundation of all subsequent proceedings (*Doe Upper* v. *Edwards*, 5 U. C. Q. B. 598), and it was necessary that the land sold for taxes should be stated on the list to have been described as granted or leased. (*Doe Bell* v. *Orr*, 5 O. S. 433.) Land not contained in the list was held not to be taxable (*Peck* v. *Munro*, 4 C. P. 363), and the list might be shown to be erroneous. (*Perry* v. *Powell*, 8 U. C. Q. B. 251; *Street* v. *Kent*, 11 U. C. C. P. 255.) Land returned in June, 1820, for assessment, was held to be liable for the taxes for the whole of that year. (*Doe d Stata* v. *Smith*, 9 U. C. Q. B. 658.) A sale of land described as granted was held entitled to prevail against a subsequent patentee. (*Charles* v. *Dulmage*, 14 U. C. Q. B. 585; *Ryckman* v. *Voltenburg*, 6 U. C. C. P. 385.)

(*e*) The County Treasurer is made the organ of communication between the Government and the officers of the local Municipalities. The officers for whom the information is really designed, and who will make the necessary use of it, are the local assessors.

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*County Treasurers, Local Treasurers, Clerks and Assessors—their Duties.*

County treasurers to furnish local clerks with lists of lands three years in arrears for taxes.

**110.** The Treasurer of every County shall furnish to the Clerk of each Municipality, except in Cities and Towns, in the County, a list of all the lands in his Municipality in respect of which any taxes shall have been in arrears for three years preceding the first day of January in any year; (*f*) and the said list shall be so furnished on or before the first day of February in every year, (*g*) and shall be headed in the words following: "List of lands liable to be sold for arrears of taxes in the year one thousand eight hundred and ;" (*h*) and for the purposes of this Act, the taxes for the first year of the three which have expired under the provisions of this Act, on any land to be sold for taxes, shall be deemed to have been due for three years, although the same may not have been placed upon a collection roll until some month in the year later than the month of January. (*i*)

Local clerks to keep the lists in their offices open to inspection, and give copies to assessors to notify occupants, &c.

**111.** The Clerk of every Municipality in each County is hereby required to keep the said list, so furnished by the County Treasurer, on file in his office, subject to the inspection of any person requiring to see the same, and he shall also deliver to the assessor or assessors of the Municipality, each year, as soon as such assessor or assessors are appointed, a copy of such list; (*k*) and it shall be the duty of the

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(*f*) "In respect of which any taxes shall have been in arrears," &c. See note *h* to sec. 128 of this Act.

(*g*) "*On or before the first day of February.*" It is by sec. 131 declared that the Treasurer shall not sell any lands which have not been included in the lists furnished by him to the Clerks of the several Municipalities *in the month of February* preceding the sale. In *Stewart* v. *Taggart*, 22 U. C. C. P. 284, 289, Hagarty, C. J., said: "Even if we found it clearly proved (which it is not) that the list was not furnished until *after* the 1st of February, we should hold that its being furnished any time *during* February would be sufficient under these two sections" (secs. 110, 131).

(*h*) The section gives the heading that is to be on the list. It does not state in terms that the *amount of taxes in arrear* should be stated on the list. (*Per* Hagarty, C. J., in *Stewart* v. *Taggart*, 22 U. C. C. P. 289.) Land described as "9 con. S. *or* E. ½ 14, N. *or* W. ½ 14," was held to be a sufficient description of land liable to be sold for arrears of taxes on the list. (*Ib.*) *Per* Hagarty, C. J.: "I see no objection to calling it North or West half. The land probably lies North-west or South-east, and nothing was shown that the description would not sufficiently identify it."

(*i*) See note *i* to sec. 128 of this Act.

(*k*) The duty of the Clerk of the local Municipality, in regard to the list furnished to him, pursuant to the requirements of the preceding section, are twofold:

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assessor or assessors to ascertain if any of the lots or parcels of land contained in such list are occupied, or are incorrectly described, and to notify such occupants and also the owners thereof, if known, [whether] resident within the Municipality [or not], upon their respective assessment notices, that the land is liable to be sold for arrears of taxes, and enter in a column (to be reserved for the purpose) the words "occupied and parties notified," or "not occupied," as the case may be; and all such lists shall be signed by the assessor or assessors, and returned to the Clerk with the assessment roll, together with a memorandum of any error discovered therein, (*l*) and the Clerk shall file the same in his office for public use; (*m*) and every such list or copy thereof shall be received in any Court as evidence in any case arising concerning the assessment of such lands; (*n*) and the duties herein imposed upon the Treasurer of any County, and the Clerk and assessors of any Municipality, shall be performed

Lists to be returned as to towns and cities withdrawn from counties.

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1. To keep the said list on file in his office, subject to the inspection of *any* person requiring to see the same.
2. To deliver to the assessor or assessors, each year, when appointed, a copy of such list.

He has other duties to perform in regard to said list, under sec. 113. Neglect of any of these duties may be summarily punished. (See sec. 117.)

(*l*) The duty of the assessor or assessors, on receipt of the copy of the list, is fourfold:

1. To ascertain if any of the lots or parcels of land contained in such list are occupied.
2. To notify the occupants *and* owners thereof, if known or resident within the Municipality.
3. To enter in a column, reserved for the purpose, the words "Occupied and parties notified," or "Not occupied" (as the case may be).
4. To sign the list or lists, and return same to the Clerk, with assessment roll;

*together* with a memorandum of any error discovered therein. (See *Stewart* v. *Taggart*, 22 U. C. C. P. 290.) *Besides*, the assessors must attach to the list a certificate signed by them, and verified by oath or affirmation. (Sec. 112.) Neglect of any of these duties may be summarily punished. (See sec. 117.) The words in brackets are amendments made by sec. 9 of 33 Vic. cap. 27, Ont.

(*m*) Not only is the Clerk to file in his office the original list, "subject to the inspection of any person requiring to see the same" (see note *k* above), but to file the signed copies returned to him by the assessors "for public use."

(*n*) The list or copy thereof shall be received in evidence. The provision is not for the admission of a certified copy in evidence on its production, as in sec. 102.

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by the Chamberlain or Treasurer and the Clerks and assessors of Cities and Towns. (*o*) (33 V. c. 27, s. 9.)

Assessor's certificate.

**112.** All assessors shall attach to each such list (*p*) a certificate signed by them, and verified by oath or affirmation, (*q*) in the form following: (*r*) "I do certify that I have examined all the lots in this list named, and that I have entered the names of all occupants thereon, as well as the names of the owners thereof, when known, and that all the entries relative to each lot are true and correct to the best of my knowledge and belief."

Local clerks to certify lands which have become occupied.

**113.** The Clerk of each Municipality shall, before the first day of May in each year, (*s*) examine the assessment roll when returned by the assessor, and ascertain whether any lot embraced in the said list last received by him from the County Treasurer is entered upon the roll of the year as then occupied, or is incorrectly described; and the said Clerk shall, on or before the first day of May in each year, furnish to the County Treasurer a list of the several parcels of land which shall appear on the resident roll as having become occupied, or which have been returned by the assessor as incorrectly described; (*t*) and the said County Treasurer shall, on or before the first day of July in the then current year, return to the Clerk of each Municipality an account of all arrears of taxes due in respect of such occupied lands, including the per centage chargeable under section one hun-

County treasurer to certify taxes due on them.

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(*o*) That is, Cities and Towns withdrawn from the jurisdiction of the County.

(*p*) *Such list.* See note *h* to sec. 110 of this Act.

(*q*) The oath or affirmation may, it is presumed, be made before the head or other members of the Council. (See sec. 217 of the Municipal Institutions Act, and notes thereto.)

(*r*) See note *h* to sec. 238 of the Municipal Institutions Act.

(*s*) See note *h* to sec. 189 of the Municipal Institutions Act.

(*t*) The duties of the Clerk, under this section, are:

1. To examine the assessment roll, and ascertain whether any lot embraced in the list received by him from the County Treasurer, under sec. 110, is entered upon the roll as occupied.
2. To furnish the County Treasurer with a list of the several parcels of land which appear on the resident roll as having become occupied, or which have been returned by the assessors as incorrectly described.

These he must do on or before the first day of May. Neglect thereof may be summarily punished. (See sec. 117 of this Act.)

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dred and twenty-six of this Act, (*u*) and the Clerk of each Municipality shall, in making out the collector's roll of the year, add such arrears of taxes to the taxes assessed against such occupied lands for the current year, and such arrears shall be collected in the same manner and subject to the same conditions as all other taxes entered upon the collector's roll. (*v*)

Clerk to insert such amount on collector's roll.

**114.** If there shall not be sufficient distress upon any of the occupied lands in the preceding section named, to satisfy the total amount of the taxes charges against the same, as well for the arrears as for the taxes of the current year, the collector shall so return it in his roll to the Treasurer of the Municipality, showing the amount collected, if any, and the

When there is not sufficient distress on such lands.

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(*u*) Section 125 is probably here intended. The list furnished by the local Clerk, under the preceding part of this section, to the County Treasurer, is to enable the latter to report the arrears and per centage due in respect of non-resident land since become occupied, with a view to the collection of taxes thereon by distress and sale of goods and chattels of the occupant.

(*v*) The arrears may be collected in the *same manner*, and *subject to the same conditions*, as all *other* taxes upon the collector's roll. It is provided by sec. 95, that the collector may, after demand, levy the taxes with costs by distress of the goods and chattels of the person who ought to pay the same, or of any goods or chattels in his possession, wherever the same may be found within the County, &c.; and by sec. 97, in the case of non-residents who have required their names to be entered on the roll, the collector may make distress of any goods and chattels which he may find on the land. There is no doubt, therefore, that goods and chattels on the land, as in the case of non-resident lands, would be liable. But the difficulty of restraining the operation of the section to goods and chattels on the land, as in the case of non-residents, is, that that is only one kind of tax, and the Act says the taxes shall be collected in the same manner and *subject* to the same conditions as *all* other taxes entered upon the roll. Now, upon the roll are the proper taxes of the party charged, which, under sec. 94, may be levied of any goods and chattels in his possession, *wherever the same may be found in the County*. The Court of Queen's Bench, however, have placed upon similar words, as used in the statute 27 Vic. cap. 19, from which this section is taken, the narrow construction of restricting the remedy as to goods and chattels on the land, as being more consistent with reason than the broader construction, which would work great hardships and do great injustice in individual cases (see *Wayne* v. *Coulter*, 25 U. C. Q. B. 177); and the construction placed upon these words by the Court is apparently sanctioned by the Legislature in the following section, which provides what the collector shall do "if there shall not be sufficient distress upon any of the occupied lands in the preceding section named," &c.

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amount remaining unpaid, and stating the reason why payment has not been made. (*w*)

Statement of arrears to be returned by local treasurer, and when.

**115.** The Treasurer of each local Municipality shall, within fourteen days after the time appointed for the return and final settlement of the collector's roll, (*a*) and before the eighth day of April in every year, (*b*) furnish the County Treasurer with a statement of all arrears of taxes and school rates directed in the said collector's roll, or by school trustees, to be collected, such return to contain a description of the lots or parcels of land, a statement of unpaid arrears of taxes, if any, on lands of non-residents, which have become occupied, as required by section one hundred and eleven of this Act, and generally such other information as the County Treasurer may require and demand, in order to enable him to ascertain the just tax chargeable upon any land in the Municipality for that year; and the County Treasurer shall not be bound to receive any such statement after the eighth day of April in each year. (*c*)

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(*w*) The effect of secs. 111, 112, 113 and 114 seems to be, that the fact of the land being in arrear and liable to be sold shall be communicated by the County Treasurer to the Township Clerk, who shall give a copy of the list to the assessors, who shall ascertain if any of the lots named are occupied, and notify the occupants and owners, if known, that the land is liable to be sold for arrears of taxes, and enter in a column, "Occupied, and parties notified," or "Not occupied." The Clerk is then to ascertain if any lot in the list is entered as occupied. He shall notify the Treasurer thereof, and the latter, by the first of July, shall return to the Clerk an account of all arrears of taxes due in respect of such occupied lands, and the Clerk shall then put the amounts in the collector's roll for the year, to be collected, &c. (*Per* Hagarty, C. J., in *Stewart* v. *Taggart*, 22 U. C. C. P. 284, 290.)

(*a*) See, as to computation of time, note *a* to sec. 128 of the Municipal Institutions Act.

(*b*) See note *h* to sec. 128 of this Act.

(*c*) The return must contain:

1. A description of the lots or parcels of land.
2. A statement of unpaid arrears of taxes, if any, on lands of non-residents which have become occupied, as required by sec. 111.

*And generally* such other information as the County Treasurer may require and demand.

This information is to be furnished the County Treasurer to enable him to ascertain the just tax chargeable upon any land in the Municipality for that year.

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**116.** In case it shall be found by the statement directed by the last preceding section to be made to the County Treasurer, that the arrears of taxes upon the occupied lands of non-residents, directed by the one hundred and thirteenth section of this Act to be placed on the collector's roll, or any part thereof, remain in arrear, such land shall be liable to be sold for such arrears and shall be included in the next or ensuing list of lands to be sold by the County Treasurer, under the provisions of the one hundred and twenty-eighth section of this Act, notwithstanding that the same may be occupied in the year when such sale takes place; and such arrears shall not again be placed upon the collector's roll for collection. (*d*)

Liability of lands to sale if arrears are not paid, and when.

**117.** If the Clerk of any such Municipality shall neglect to preserve the said list of land in arrears for taxes, furnished to him by the County Treasurer, or to furnish copies of such lists as required to the assessor or assessors, or shall neglect to return to the County Treasurer a correct list of the lands which have come to be occupied, as required by the one hundred and fourteenth section of this Act, and a statement of the balances which may remain uncollected on any such lots, as required by the one hundred and fifteenth section of this Act; (*e*) or if any assessor or assessors shall neglect to examine such lands as are entered on each such list, and make returns in manner hereinbefore directed, (*f*) every officer making such default shall, on summary conviction thereof before any two Justices of the Peace having jurisdiction in the County in which such Municipality is situated, be liable to the penalties imposed by sections one hundred and seventy-six, one hundred and seventy-seven, and one hundred and seventy-eight of this Act; all fines so imposed

Penalty on clerks and assessor neglecting duties under preceding sections.

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(*d*) The ordinary way of realizing taxes on non-resident lands, where the owners are not rated at their own request, is by sale of the lands. (*Per* Richards, J., in *Berlin* v. *Grange*, 5 U. C. C. P. 211.) But in aid of this remedy, provision is made in the 114th and subsequent sections, for distress of goods and chattels on such lands, when subsequent to the accruing of the arrears they become occupied. If the latter fail, the only course left for the County Treasurer is to fall back upon the principal and ordinary remedy, and that is all that this section directs.

(*e*) The duty to preserve the list and furnish copies to the assessors is imposed by sec. 111.

(*f*) The duty of the assessors to examine the lands and to make a return thereof, is also imposed by sec. 111. See further, note *w* to sec. 114 of this Act.



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How to be levied.

to be recoverable by distress and sale of any goods and chattels of the party making default. (*g*)

After such return, local officers not to receive taxes.

**118.** After the collector's roll has been returned to the Treasurer of the local Municipality, and before such Treasurer has furnished the statement to the County Treasurer mentioned in section one hundred and fifteen, arrears of taxes may be paid to such local Treasurer; but after the said statement has been referred to the County Treasurer, no more money on account of the arrears then due shall be received by any officer of the Municipality to which the roll relates. (*h*)

Collection of arrears to belong to treasurer of county only.

**119.** The collection of the arrears shall thenceforth belong to the Treasurer of the County alone, (*i*) and he shall receive payment of such arrears, and of all taxes on lands of non-residents, and he shall give a receipt therefor specifying the amount paid, for what period, the description of the lot or parcel of land, and the date of payment, in accordance with the provisions of section one hundred and seventy-two of this Act. (*j*)

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(*g*) The fine under sec. 175 is a sum not exceeding $100, and the punishment under sec. 177 a fine not exceeding $200, and to imprisonment until the fine is paid, or to imprisonment for a term not exceeding six months, or to both fine and imprisonment in the discretion of the Court; and under the section here annotated, though not according to the sections mentioned, the fines and penalties may be imposed on conviction before any two Justices having jurisdiction in the County in which the Municipality is situate.

(*h*) The collection thenceforth belongs to the Treasurer of the County alone (sec. 119), and any distress or other proceeding on the part of the local Municipality for the recovery of the taxes, unless in cases coming under secs. 111 and 113 of this Act, would be illegal. (*Holcomb* v. *Shaw*, 22 U. C. Q. B. 92; *Smith* v. *Shaw*, 8 U. C. L. J. 297.) It would seem that the roll should not only be returned by the collector to the local Municipality, but that the latter should return it to the County Treasurer. (See sec. 122 of this Act.)

(*i*) After the return of the collector's roll, the duty of collecting is cast upon the Treasurer of the County, and upon him *alone*. The Council of the County has no control over him so far as this duty is concerned. (See note *a* to sec. 90 of this Act.) In cases of non-resident lands subsequently becoming occupied, he may make use of the officers of the local Municipality in order, if possible, to make the amount of the taxes by distress of goods and chattels on the land. (See secs. 111 and 113 of this Act, and notes thereto.)

(*j*) It having been declared that the collection of the arrears shall, after the return of the collector's roll, belong to the Treasurer of the County alone, he and he alone is the proper person to receive payment of arrears on lands of non-residents.

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2. Any local Municipality may, by By-law, remit, either in the whole or in part, any taxes now due or to become due upon the lands of non-residents within such Municipality, specifying the particular lands upon which the remission is made; (*k*) and upon the passing of such By-law it shall be the duty of the Clerk forthwith to transmit a copy of the By-laws to the Treasurer or other officer having the collection of such arrears, (*l*) who shall then collect only so much of said taxes as are not remitted.

Municipalities may remit taxes due on non-residents' lands.

**120.** The Treasurer shall not receive any part of the tax charged against any parcel of land, unless the whole arrears then due be paid, or satisfactory proof is produced of the previous payment, or erroneous charge of any portion thereof; but if satisfactory proof is adduced to him that any parcel of land on which taxes are due has been subdivided, he may receive the proportionate amount of tax chargeable upon any of the subdivisions, and leave the other subdivisions chargeable with the remainder, (*m*) and the Treasurer may, in his books, divide any piece or parcel of

The whole amount to be paid at once, unless the land is subdivided.

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The receipts which he may give should specify—

1. The amount paid;
2. For what purpose;
3. The description of the lot or parcel of land;
4. The date of payment.

(*k*) The rule is, that after the return of the collector's roll, the collection of arrears of taxes appertains to the Treasurer of the County alone. This being so, unless there were some provision made to the contrary, neither the Council of the County nor the Council of the local Municipality could legally, in any manner, interfere with the proper performance of that duty. But as the taxes when collected become and are the property of the local Municipality, it has been deemed only right that the Council of the local Municipality shall have power, in some cases, to remit taxes, in whole or in part, due on the land of non-residents. This power can only be exercised by By-law. When so exercised, a certificate of the fact must be sent to the County Treasurer for his guidance. The duty, of course, remains to collect the balance not remitted.

(*l*) As the collection of the taxes after the return of the roll appertains to the Treasurer *alone*, it is not easy to understand "the other officer having the collection of arrears," to whom reference is here made. It may be intended to refer to the collector before the return of his roll. But the first part of the section deals only with the case of the return of the roll. This part, instead of being merely, as it were, an exception to the first part of the section, may be read as an independent section, covering ground not covered by the first part of the section.

(*m*) The rule is for the Treasurer not to receive part payment of arrears of taxes.

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land which may have been returned to him in arrear for taxes, into as many parts as the necessities of the case may require. (*n*)

If demanded treasurer to give a written statement of arrears

**121.** The Treasurer shall, on demand, give to the owner of any land charged with arrears of taxes, a written statement of the arrears at that date, and he may charge twenty cents for the search on each separate lot or parcel not exceeding four, and for every additional ten lots a further fee of twenty cents; but the Treasurer shall not make any charge for search to any person who forthwith pays the taxes. (*o*)

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The exceptions created by this section are two:

1. If satisfactory proof be produced of the previous payment, or erroneous charge of any part thereof.
2. If satisfactory proof is adduced that any parcel of land on which taxes are due has been subdivided.

The proof in each case is to be such as to satisfy the Treasurer; *i. e.*, be satisfactory *to him*. It is presumed that if the proof be reasonable, the proof will be deemed by him to be satisfactory. It is not supposed that any public officer will act otherwise than reasonably in the discharge of any public duty cast upon him by virtue of his office. If the proof offered be a paper purporting to be a receipt of a collector, school trustee or other Town, Village or Township officer, the Treasurer is not to accept such proof until he has received a report upon the same from the Clerk of the Municipality interested, certifying the correctness thereof. (Sec. 124, sub. 2.)

(*n*) The receipt of a proportion of taxes because of a subdivision, and in respect of a subdivided part, necessitates the duty upon the Treasurer of charging the remaining subdivided parts with the remainder of the amount of taxes, and, if convenient or necessary for that purpose, that he should divide the entries of the parcel of land in his books, and he is here authorized to do so. (See *In re Secker and Paxton*, 22 U. C. Q. B. 118.) In *Payne* v. *Goodyear*, 26 U. C. Q. B. 448, 451, Draper, C. J., in delivering the judgment of the Court, said: "It appears to me that under the 113th section (same as above, 120) of the Assessment Act, when satisfactory proof is adduced to the Treasurer that an entire lot has been subdivided, that officer must adjudge the question of subdivision, and, finding the fact established, he has the *right* to receive the proportionate sum of the taxes due on the whole in discharge of the particular subdivision so ascertained. When he has in good faith determined that the lot has been subdivided, and then received the due proportion of the taxes, the subdivision is as much discharged from the incumbrance as if the taxes on the entire lot had been paid." (See further, *Brooke* v. *Campbell*, 12 Grant, 526; *Stewart* v. *Taygart*, 22 U. C. C. P. 284.) The section has been held to apply to receive a proportionate part of the redemption money after a sale of the whole lot for taxes. (See notes to sec. 148 of this Act.)

(*o*) The Treasurer is not bound to submit to the demand of any person, whether interested or not, requiring a statement of arrears

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Lands on which taxes unpaid to be entered in certain books by treasurer.

**122.** The Treasurer of every County shall keep a separate book for each local Municipality, in which he shall enter all the lands in the Municipality on which it appears, from the returns made to him by the Clerk, and from the collector's roll returned to him, that there are any taxes unpaid, and the amounts so due; and he shall, on the first day of May in every year, complete and balance his books by entering against every parcel of land the arrears, if any, due at the last settlement, and the taxes of the preceding year which remain unpaid; and he shall ascertain and enter therein the total amount of arrears, if any, chargeable upon the land at that date. (*p*)

Proceedings where any land is found not to have been assessed in any year.

**123.** If, at the yearly settlement to be made on the first day of May, it appears to the Treasurer that any land liable to assessment has not been assessed, he shall report the same to the Clerk of the Municipality, and the Clerk shall enter such land on the collector's roll of the current year, or on the roll of non-residents, as the case may be, as well for the arrears omitted of the year preceding only, if any, as for the tax of the current year; and the valuation of such land so entered shall be the average valuation of the three previous years, if assessed for the said three years, but if not so assessed, the Clerk shall require the assessor or assessors for the current year to value such lands; and it shall be the duty of the

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of taxes on any particular parcel or parcels of land. But it is his duty to submit to the demand of the owner (or his agent, which is the same thing), and to give him a written statement of the arrears to date, provided his fees for search (there being no fee for certificate or statement) be paid or tendered, *or* provided the person making the demand be authorized to do so, and *forthwith* pays the taxes.

(*p*) The duties of the Treasurer under this section are:

1. To keep a separate book for each local Municipality.
2. To enter therein all the lands in the Municipality on which it appears, from returns made to him by the Clerk, *and* from the collector's roll returned to him, that there are any taxes unpaid.
3. To enter therein the amounts so due.
4. To complete and balance his books on the first day of May in every year. (See note *h* to sec. 189 of the Municipal Institutions Act.)
5. To enter therein the total amount of arrears, if any, chargeable upon the lands at that date. (See note *u* to sec. 125 of this Act.)

The books, when correctly kept, are evidence of the land being five years in arrear, on ejectment brought for the recovery of the land by a vendee on a sale for taxes. (See *Hall* v. *Hill*, 22 U. C. Q. B. 578.)

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How land shall be valued.

assessor or assessors to value such lands when required, and certify the valuation in writing to the Clerk; (*q*) and the

Appeal from valuation.

owners of such lands shall have the right to appeal to the Council at its next or some subsequent meeting after the taxes thereon have been demanded by the collector, but within fourteen days after such demand, which demand shall be made by the collector before the tenth day of November; and the Council shall hear and determine such appeal on some day not later than the first day of December. (*r*)

Treasurer to correct errors.

**124.** The County Treasurer may correct any clerical error which he himself discovers from time to time, or which may be certified to him by the Clerk of any Municipality. (*s*)

As to pretended receipts, &c.

2. If any person produces to the Treasurer, as evidence of payment of any tax, any paper purporting to be a receipt of a collector, school trustee, or other Municipal officer, he

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(*q*) The object of this section is to make subject to taxes land that ought to have been assessed, but which, from some cause, was not assessed. The procedure provided for the purpose is the best, under the circumstances, that could be devised to meet the exigencies of such a case. The Treasurer may himself at any time correct clerical errors. (See sec. 124 of this Act.)

(*r*) The duties of the Court of Appeal are required to be performed on or before the 15th of June. (Sec. 59.) But here, it will be observed, the appeal is not given to the Court of Appeal, but direct to the Council. The demand for payment of taxes must be made by the collector before the 10th of November, and the appeal must be made within fourteen days after demand, or it cannot be made at all. (See as to computation of time, note *a* to sec. 128 of the Municipal Institutions Act.)

(*s*) A ratepayer from 1858 to 1861 inclusive, occupied as lessee a house and land adjoining on lot 24, part of which lot, in 1854, had been laid out by his landlord into village lots, and a plan of the subdivisions filed in the Registry Office. He had been regularly assessed, and had paid for the premises thus occupied by him, but the whole of lot 24 had, during these four years, been returned as non-resident. After the Treasurer had issued his warrant for sale to the Sheriff, he was applied to to correct the alleged mistake in the rolls, so as to except the part occupied by the ratepayer above mentioned from that returned, but refused to do more than allow the Sheriff to deduct the amount paid by the ratepayer. A certificate was presented to the Township Clerk for signature, to be addressed to the Treasurer, with a view of notifying him of certain errors in the mode of assessment of the lot No. 24, but the Clerk declined to sign it, alleging that he did not think he would be justified in doing so. The Court of Queen's Bench, on an application for a *mandamus*, refused to interfere. (*In re Secker and Paxton*, 22 U. C. Q. B. 118.)

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shall not be bound to accept the same until he has received a report from the Clerk of the Municipality interested, certifying the correctness thereof, or until he shall be otherwise satisfied such tax has been paid. (*t*)

**125.** If, at the balance to be made on the first day of May in every year, it appears that there are any arrears due upon any parcel of land, the Treasurer shall add to the whole amount then due ten per centum thereon. (*u*)

Ten per cent. to be added to arrears yearly.

(*t*) Before the Treasurer is to give any credit for taxes, he must be satisfied by evidence of the payment. The production of a paper *purporting* to be a receipt for the taxes is *some* evidence of payment. But the Treasurer must be satisfied of the genuineness of the receipt, and of the fact that the taxes really were paid. The receipt, even if genuine, is not conclusive evidence of payment. (See note *m* to sec. 120 of this Act.)

(*u*) The Treasurer under sec. 122 is required to keep books, in which he shall enter all the lands on which it appears from the Clerk's return and the collector's rolls there are any taxes unpaid, and *the amount so due*. He is under the same section required, on first of May in every year, to complete and balance his books by entering against every parcel of land the *arrears*, if any, at the last settlement, and the taxes of the preceding year *which remain unpaid*. He is by the same section required to ascertain and enter in his books the *total amount* of arrears, if any, chargeable upon the land at that date. By this section it is declared, if, at the balance to be made on first of May in every year, it appears that there are *any arrears* due upon any parcel of land, he is required to *add* to the *whole amount then due* ten per centum thereon.

In *Gillespie et al* v. *Hamilton*, 12 U. C. C. P. 427, it appeared that on 1st May, 1862, the Chamberlain of the City entered in his books against the lands of the plaintiffs the arrears of taxes chargeable thereon, at the sum of $855 25, made up as follows:

| | | |
|---|---|---|
| Taxes for 1859 | $250 00 | |
| 1860, May 1, 10 per cent. | 25 00 | |
| | | $275 00 |
| Arrears, May 1, 1860. | 275 00 | |
| Taxes for 1860 | 250 00 | |
| | 525 00 | |
| 1861, May 1, 10 per cent. | 52 50 | |
| | | 577 50 |
| Arrears, May 1, 1861 | 577 50 | |
| Taxes for 1861 | 200 00 | |
| | 777 50 | |
| 1862, May 1, 10 per cent. | 77 75 | |
| | | 855 25 |

It was contended by plaintiffs that this statement was erroneous, and that the following should have been the statement:—

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When there is distress upon lands of non-residents, treasurer may authorise collector to levy.

**126.** Whenever the County Treasurer is satisfied that there is distress upon any lands of non-residents in arrear for taxes, (*a*) he shall issue a warrant under his hand and

| | | |
|---|---|---|
| Taxes for 1859 | $250 00 | |
| 1860, May 1, 10 per cent. | 25 00 | |
| | | $275 00 |
| Arrears, May 1, 1860 | 275 00 | |
| Taxes for 1860 | 250 00 | |
| 10 per cent. on $500 | 50 00 | |
| | | 575 00 |
| Arrears, May 1, 1861 | 575 00 | |
| Taxes for 1861 | 200 00 | |
| 10 per cent. on $700 | 70 00 | |
| | | 845 00 |

The Court held the *former* to be the correct statement.

Draper, C. J., in giving the judgment of the Court, said (p. 429): "The question is, if the ten per cent. should be charged on the gross amount of arrears appearing due at each annual settlement, or only on the amount of taxes due for the several years. In other words, whether the amount on which the ten per cent. is to be calculated on 1st of May, 1862, is to include the preceding addition of ten per cent. made on 1st of May, 1860 and 1861, respectively. I think the Legislature have used language very clearly indicating an intention that ten per cent. should be added every year, calculated on the whole amount which is in arrear and due upon the lands at the time the charge is made. In the present case the lands were liable to satisfy a given sum on 1st of May, 1862, which sum included taxes for preceding years and ten per cent. added thereto at the preceding 1st of May. To that sum, which constituted the whole amount due on the lands, the statute, as I read it, directs that ten per cent. should be added."

(*a*) It is not made the duty of the Treasurer to search for a distress on lands; but if satisfied that there is a distress, he must issue a warrant of distress. In order, therefore, to render the Treasurer liable for not making a distress, it would be necessary to aver and prove that he had notice of the distress. (See *Foley* v. *Moodie*, 16 U. C. Q. B. 254.) The neglect of a collector whose duty it was to search for distress, was held not to invalidate a sale subsequently made of the land for arrears that might in whole or in part have been satisfied by such distress. (*Allan* v. *Fisher*, 13 U. C. C. P. 63.) The old law was formerly otherwise, especially if it could be shown that there was a sufficient distress on the land at the time of the sale. (See *Doe Bell* v. *Reaumore*, 3 O. S. 243; *Doe Upper* v. *Edwards*, 5 U. C. Q. B. 594; *Dobbie* v. *Tully*, 10 U. C. C. P. 432.) But proving that there were a few pieces of timber on the lot, cut down by trespassers, and left by them to be prepared for market in a lot, or that some persons were in the habit of making sugar on the lot, leaving kettles and sap-troughs thereon, were held not sufficient evidence of a distress being on the land to invalidate the sale of it for taxes. (See *Doe Upper* v. *Edwards*, 5 U. C. Q. B. 594; *Doe d. Powell* v. *Rorison*, 2 U. C. Q. B. 201; *Fraser* v. *Mattice et al*, 19 U. C. Q. B. 150.) The old law as to the necessity of a distress, and the omission to distrain invalidating a sale, was

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seal to the collector of the local Municipality, (*b*) who shall thereby be authorized to levy the amount due, upon any goods and chattels found upon the land, in the same manner and subject to the same provisions as are contained in the sections from section ninety-five to section one hundred and one of this Act, with respect to distresses made by collectors. (*c*)

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apparently altered by the statute 13 & 14 Vic. cap. 67. (See *Hamilton et al* v. *McDonald*, 22 U. C. Q. B, 136; *McDonell et al* v. *McDonald*, 24 U. C. Q. B. 74; *Weegan* v. *McDiarmid*, 12 U. C. C. P. 499.) In *Allan* v. *Fisher*, 13 U. C. C. P. 70, Draper, C. J., said: "It appears to me impossible to hold that the collector's neglect to search for goods which with diligence he might have found, or to enquire with sufficient care for the address of the party assessed on his roll, in order to transmit a statement to him by post, under the 41st section can have that effect." This was quoted approvingly by the present Chancellor in *The Bank of Toronto* v. *Fanning*, 17 Grant, 517. In *Stewart* v. *Taggart*, 22 U. C. C. P. 284, 288, Hagarty, C. J., said: "I am of opinion that if the land was assessed and the taxes in fact unpaid, an omission by the collector to levy the amount from property which, by due diligence, he might have found liable thereto, cannot, in the present state of the law, avoid the sale. It cannot be, in my judgment, that the validity of the sale is to depend on the diligence or want of diligence in a collector in some previous year." In *Allan* v. *Fisher*, 13 U. C. C. P. 63, it was, however, held that when the lot was occupied and the owner known, and full distress thereon, it was the duty of the assessor to enter the owner's name, and the name also of the known occupant. Instead of this, he entered the lot on the roll as land of a non-resident, without any name. The result was that during that year no officer but the Treasurer could receive the rates, and would be the only officer who could distrain, and the Court held the assessment for that year bad, and avoided the sale. Hagarty, C. J., in *Stewart* v. *Taggart*, 22 U. C. C. P. 289, referring to the decision on this point, said: "This decision was in 1863, under (apparently) 16 Vic. cap. 182. The present case is very different. The assessments for 1865, 1866 and 1867 are, I think, regular for reasons stated. In 1868, the first year that distress is alleged to have been on the lot, Stewart was the person assessed, and was on the resident roll, and returned as not collected on the absentee list. Therefore it seems to fall within the case of *Allan* v. *Fisher*, as being merely a case of neglect to search for distress or to notify the absent owner. The omission of duty did not, as in the case cited, cause the land to be placed on the non-resident roll, and thus take the collection out of the hands of the local officer."

(*b*) Where the warrant was tested "Given under my hand and seal, being the corporate seal," and the seal bore the same form, emblem, legend, &c., as the County seal, it was held that the County was not liable in trespass or trover. (*Snider* v. *Frontenac*, 30 U. C. Q. B. 275.)

(*c*) The power of the County Treasurer by warrant to levy is limited to non-resident lands, so long as they remain as such under

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From what period unpatented land shall be liable to taxation.

**127.** Unpatented land vested in or held by Her Majesty, which shall hereafter be sold or agreed to be sold to any person, or which shall be located as a free grant, shall be liable to taxation from the date of such sale or grant, (*d*) and any such land which has been already sold or agreed to be sold to any person, or has been located as a free grant, prior to the first day of January, one thousand eight hundred and sixty-three, shall be held to have been liable to taxation since the first day of January, one thousand eight hundred and sixty-three, (*e*) and all such lands shall be liable to taxation thenceforward under this Act, in the same way as other land, whether any license of occupation, location ticket, certificate of sale, or receipt for money paid on such sale, has or has not been, or shall or shall not be issued, and (in case of sale or agreement for sale by the Crown) whether any payment has or has not been, or shall or shall not be made thereon, and whether any part of the purchase money is or is not overdue and unpaid; (*f*) but such taxation shall not in any way affect the rights of Her Majesty in such lands. (*g*)

Rights of the crown saved.

When lands to be sold for taxes.

Arrears due for three years to be levied by warrant of the warden to the treasurer.

**128.** Whenever a portion of the tax on any land has been due for and in the third year, or for more than three years preceding the current year, the Treasurer of the County shall, unless otherwise directed by a By-law of the County Council, submit to the Warden of such County a list in duplicate of all the lands liable, under the provisions of this Act, to be sold for taxes, with the amount of arrears against each lot set opposite to the same, and the Warden shall authenticate each of such lists by affixing thereto the seal of the corporation and his signature, and one of such lists shall

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his control. That control ceases as soon as, under the provisions of the 111th and following sections of this Act, it becomes his duty to take the steps preliminary to the amount of the arrears being placed upon the roll of the Township collector for the purpose of being collected by him under his roll out of the property of the occupant. (*Snyder* v. *Shibley*, 21 U. C. C. P. 518, 529.)

(*d*) Land vested in Her Majesty the Queen is, in general, exempt from taxation. (Sec. 9, sub. 1.) But though not patented, if "sold or agreed to be sold," or "located as a free grant," the interest of the purchaser or locatee is liable to taxation and sale. (Sec. 139.)

(*e*) This was the date fixed by the Act 27 Vic. cap. 19, sec. 9, of which this section is substantially a re-enactment.

(*f*) This part of the section is intended to cover a defect which was pointed out in *Street* v. *Kent*, 11 U. C. C. P. 255.

(*g*) See note *l* to sec. 139 of this Act.

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be deposited with the Clerk of the County, (*h*) and the other shall be returned to the Treasurer, with a warrant thereto annexed, under the hand of the Warden and the seal of the County, commanding him to levy upon the land for the

(*h*) It is declared that "Whenever *a portion* of the tax on any land has been due for *and in the third year*, or for *more* than three years *preceding* the current year, the Treasurer of the County shall," &c. The words in Con. Stat. U. C. cap. 55, sec. 124, were: "Whenever a *portion* of the tax on any land has been due for *five years*, or for such longer period," &c. The statute authorizes a sale upon a contingency. The taxes must be in arrear for the period mentioned before any legal sale can take place. A sale for arrears for a less period than mentioned is the same as a sale where no taxes are in arrear. All the proceedings are in such case void. (*Ford* v. *Proudfoot*, 9 Grant, 478; *Kelly* v. *Macklem*, 14 Grant, 29; *Bell* v. *McLean*, 18 U. C. C. P. 416; see also *Doe Bell* v. *Reaumore*, 3 O. S. 243; *Munro* v. *Grey*, 12 U. C. Q. B. 647; *Errington* v. *Dumble*, 8 U. C. C. P. 65; *Harbourn* v. *Boushey*, 7 U. C. C. P. 464.) In *Ford* v. *Proudfoot*, 9 Grant, 478, which was decided under that Act, the arrears of taxes for non-payment of which the land was sold were for the years 1853-4-5-6-7. The Treasurer's warrant for sale was issued on the 25th of February, 1858, and the sale took place on the 13th of July in the same year. There were therefore five years' taxes due at the date of the warrant and of the sale. But it was held that the taxes were not due for five years within the meaning of the Act. Spragge, V. C., in giving judgment, said: "It is clear, from the sections to which I have referred, that no taxes for a year or part of a year are made payable until the collector's roll is placed in his hands, because until then there is no hand to receive them. This may be as late as the 1st day of October. It is also clear that the year's taxes cannot be due in any sense until after the time for appealing from the assessment roll is expired, and the Municipality has fixed the rate which shall be imposed. This must be done, under the statute, before the 1st of August. It may be done before. It is quite impossible that it should be done so early in the year as the 23rd of February, the date of this warrant; and taking the periods given for the different proceedings, the latter part of July would be the more probable time. But it is said that a *portion* of the year's tax is due after the 1st of January, and that *other* portions grow due from day to day until the whole is due, and that all the statute requires is that a *portion* shall be due for five years. I cannot accede to this view. . . . To apply my construction of the Act to this case, the taxes for 1853—the earliest year of the arrear—were due and payable, say, sometime between 1st of August and 1st of October in that year. The Treasurer's warrant was issued a little more than *four years and a half* after the earliest of these dates, and the sale took place *within* five years; consequently the sale was premature." In *Kelly* v. *Macklem*, 14 Grant, 29, it was determined that there must be the full period of arrears due before the issue of the warrant to sell. In *Bell* v. *McLean*, 18 U. C. C. P. 416, 423, Wilson, J., went further than the learned Chancellor, and said: "I incline to think very strongly that the taxes of the preceding year, for the purposes of sale for arrears, are not to be considered as in arrear till after the expiry of the year

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Proviso as to warrants issued before Jan. 1st 1867.

arrears due thereon, with his costs: (*i*) Provided always, that when a warrant has been placed in the hands of the Sheriff or High Bailiff, before the first day of January, one thousand eight hundred and sixty-seven, commanding him to collect arrears of taxes, he shall proceed with the collection thereof under the provisions of the Acts in force before the passing of this Act; and in every case in which such collection

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in which they are imposed. It is only after that time the County Treasurer has anything to do with them. The fiscal year is clearly correspondent with the calendar year in this respect, and the *preceding* year's taxes are those unpaid at the end of the year. By fixing this definite time the computation is made easy for all parties, and there is nothing inconsistent in holding that taxes may be due to enable a distress or suit to be maintained for them at one period, and that they may be considered as due at another period for the purposes of a sale of the land itself. The Treasurer's books will certainly not show five years' arrears if any warrant for sale be issued by him, unless the time be computed from the first of the year after the preceding year's taxes have been imposed." In *Bell* v. *McLean*, the collector got his roll on the 26th of August, 1852, and the County Treasurer issued his warrant on the 11th August, 1857; so that according to the decision in *Ford* v. *Proudfoot*, and without going as far as suggested by Mr. Justice Wilson, the five years had not expired, and the sale was void. So in *Connor* v. *McPherson*, 18 Grant, 607, where the collector's roll was not delivered till after August, 1852, and the Treasurer's warrant dated 10th July, 1857, the sale, on the authority of the cases already mentioned, was held invalid. When, owing to land being patented in July, taxes are charged thereon only for half a year, yet this is in effect a taxation for the whole fiscal year; and so long as the patent issues before the assessment is completed, taxes for the whole of the year wherein such patent issues may be properly imposed, and the land sold therefor if unpaid. (*Cotter* v. *Sutherland*, 18 U. C. C. P. 357.) Besides reducing the period of arrears from five to three years before the issue of the warrant to sell, the Legislature, by the use of the words "*for* and *in* the third year," have endeavoured to avoid some of the difficulties which presented themselves in the decided cases to which reference has been made. See further, sec. 18 of this Act, and notes thereto.

(*i*) In *Hall* v. *Hill*, 2 Er. & Ap. 572, the late Chancellor Vankoughnet said: "The Treasurer's warrant is the foundation of the subsequent proceedings, irregularities in which, where they have occurred in acts merely ministerial or executive, the Courts have gone a long way to excuse. . . . I look upon the act of the Treasurer, in determining what lands are in arrear for taxes and liable to sale, as a *quasi* judicial act, and one which must be performed in accordance with the statute." So where the statute required the Treasurer, in his warrant, to distinguish between lands patented and those under lease or license of occupation, the warrant was held to be a nullity. (*Hall* v. *Hill*, 22 U. C. Q. B. 578; s. c. 2 Er. & Ap. 569.) A description of the lands as "*all* patented" is, however, sufficient. (*Brooke* v. *Campbell*, 12 Grant, 526.) So where the words used were "*all* deeded." (*Cook* v. *Jones*, 17 Grant, 488.)

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is made by sale of any lands, the Sheriff or High Bailiff shall, in the event of the lands not being redeemed according to law, complete the sale by a deed of conveyance to the purchaser. (*k*)

**129.** The Council of a County, City or Town shall have power to extend the time for the payment of taxes beyond the term of *three* years, by By-law passed for that purpose. (*l*) Council may extend time for payment.

**130.** It shall not be the duty of the Treasurer of any County to make inquiry, before effecting a sale of lands for taxes, to ascertain whether or not there is any distress upon the land, (*m*) nor shall he be bound to inquire into or form any opinion of the value of the land; (*n*) and if any tax in Treasurer's duty on receiving warrant to sell.

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The warrant should show the particular land that is to be sold. (*Townsend* v. *Elliot*, 12 U. C. C. P. 217.) A description in the warrant of a particular piece of land as "Pt. of s. pt. 111, 1st Con. Tay. 40 acres, $12 95," was not sufficient. (*Grant* v. *Gilmour*, 21 U. C. C. P. 18.) It would be sufficient if the identity of the piece of land sold could be established. (*McDonell* v. *McDonald*, 24 U. C. Q. B. 74.) It must be under the seal as well as the signature of the proper officer, (*Morgan* v. *Quesnel*, 26 U. C. Q. B. 539,) and founded on the Treasurer's return, when a return was required. (*Doe Bell* v. *Reaumore*, 3 O. S. 243; see also, *Errington* v. *Dumble*, 8 U. C. C. P. 65.) A mistake in representing the taxes as due from 1st July, 1820, to 1st July, 1 28, in place of from 1st of January of these years, was held not to hurt. (*Doe Stata* v. *Smith*, 9 U. C. Q. B. 658.) It was held, under the provisions of a particular statute, that after a separation of Counties, the warrant should go to the Sheriff of the junior County to sell for arrears due both Counties. (*Doe Mountcashel* v. *Grover*, 4 U. C. Q. B. 23.) A warrant issued in 1837 and postponed by 1 Vic. cap. 20, was held to have been properly acted on in 1839. (*Todd* v. *Werry*, 15 U. C. Q. B. 614; see also, *Hamilton* v. *McDonald*, 22 U. C. Q. B. 136.)

(*k*) It would seem that a deed made by the successor of a Sheriff who made the sale for taxes, is good under statute 27 & 28 Vic. cap. 28, sec. 43. (*Bell* v. *McLean*, 18 U. C. C. P. 416.)

(*l*) See note *h* to sec. 123 of this Act.

(*m*) See note *a* to sec. 126 of this Act.

(*n*) In *Henry* v. *Burness*, 8 Grant, 345, 357, Spragge, V. C., in speaking of the duty of a Sheriff conducting a tax sale (Sheriffs at that time being the authorized officers to do so), said: "Mr. Cameron put it that the Sheriff cannot be taken to know that the value of a whole lot necessarily so greatly exceeds the arrears of taxes that a sale of the whole is improper. This implies that the Sheriff is not bound to acquaint himself with what he is selling; that he may properly remain ignorant of the improvements, the quality of the soil, and of every particular beyond the number of the lot and the assumed quantity. I by no means concede that he can be properly ignorant of these particulars," &c. The decla-

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respect to any lands sold by the Treasurer after the passing of this Act, in pursuance of and under the authority thereof, shall have been due for the third year or more years preceding the sale thereof, (*o*) and the same shall not be redeemed in one year after the said sale, (*p*) such sale and the official deed to the purchaser of any such lands (provided the sale shall be openly and fairly conducted) shall be final and binding upon the former owners of the said lands, and upon all persons claiming by, through or under them, it being intended by this Act that all owners of land shall be required to pay the arrears of taxes due thereon within the period of three years, or redeem the same within one year after the Treasurer's sale thereof. (*q*)

Deed to be binding on all, if land not redeemed in one year.

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ration made in this section to the effect that the Treasurer shall not be *bound* to inquire into or form *any opinion* of the value of the land, was so made because of the decision in *Henry* v. *Burness*.

(*o*) See note *h* to sec. 128 of this Act.

(*p*) See sec. 148 of this Act, and notes thereto.

(*q*) In *Cotter* v. *Sutherland*, 18 U. C. C. P. 357, Wilson, J., said, at p. 390: "We should require strict proof that the tax has been lawfully made; but in promoting its collection we should not surround the proceduewith too unnecessary or unreasonable rigour. We should see that the law is honestly and fairly carried out, and that no injustice is done to the owner or the public, and that the claims of purchasers are properly maintained. A substantial rather than a literal compliance with the provisions of the statute will more equally, and quite fairly protect all parties." This language was quoted with approbation by Chief Justice Richards when delivering the judgment of the majority of the Judges of the Court of Error and Appeal in *Connor* v. *Douglass*, 15 Grant, 453-464. In *Payne* v. *Goodyear*, 26 U. C. Q. B. 448-451, Draper, C. J., in delivering the judgment of the Court, said: "The primary, it may be said the sole, object of the Legislature in authorizing the sale of lands for arrears of taxes was the collection of the tax. The statutes were not passed to take away lands from their legal owners, but to compel those owners who neglected to pay their taxes, and from whom payment could not be enforced by the other methods authorized, to pay by a sale of a sufficient portion of their lands." In *Cook* v. *Jones*, 17 Grant, 489, the present Chancellor said: "The language of Chief Justice Draper in a previous case (*Payne* v. *Goodyear*, 26 U. C. Q. B. 451,) states accurately, as I think, the purpose and character of these statutes.—(He then quoted the language of the Chief Justice as above, and proceeded.)—This is the language of a learned Judge less disposed than some other Judges of the Courts, and less disposed than the majority of the Court in *Connor* v. *Douglass*, to hold tax sales not vitiated by irregularities. I think that Mr. Justice Wilson, in *Cotter* v. *Sutherland*, takes a just view of the objects and nature of these statutes."

The section here annotated declares that the sale and the official deed to the purchaser of any of such lands (*provided the sale shall be*

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*openly and fairly conducted*) shall be final and binding, &c. To allow bidders to buy off each other at such a sale, and so to combine to prevent a fair competition, is illegal. Such conduct is against the policy of the law, as the law regards auction sales as a just and open method of selling property for the best price. It is also against the policy of the assessment laws, which appear to have been framed with an anxious desire that when land is necessarily sold for taxes, as small a quantity as possible should be sold. Where competition is bought off or silenced, it is a misapplication of terms to call a purchase, under such circumstances, a purchase at auction. If the Treasurer, when selling lands for taxes, sees that competition—the essential element of an auction sale—is virtually put down, it is his duty to adjourn the sale. The course proper for the Treasurer, under such circumstances, may be attended with difficulty; but the law has a right to look for the exercise of sound judgment, firmness and discretion, as well as firmness in the execution of such duties. (*Per* Spragge, V. C., in *Henry* v. *Burness*, 8 Grant, 357.) Where one of the Sheriff's officers conducted the sale, at which he knocked down, without any competition, to another officer of the Sheriff, a lot of land worth about £350 for less than £7 10s., the sale was declared void. (*Massingberd* v. *Montague*, 9 Grant, 92; s. c. 8 U. C. L. J. 274.) Where a lot was put up for sale on the 10th of April, when an intending purchaser offered to take 29 acres and pay the taxes, but afterwards refused to carry out the purchase, and in the July following, at an adjourned sale, the same person purchased the 200 acres for the taxes upon a statement that he had already acquired a title to the land, which he desired to confirm, and with a request not to oppose him, the sale was held illegal. (*Todd* v. *Werry et al*, 15 U. C. Q. B. 614.) In such a case the remedy of the owner seems to be to file a bill in Chancery. (*Raynes* v. *Crowder*, 14 U. C. C. P. 111; *McAdie* v. *Corby*, 30 U. C. Q. B. 349.) The section concludes with the declaration of policy on the part of the Legislature, in these words: "It being intended *by this Act* that all owners of land shall be *required to pay the arrears of taxes due thereon* within the period of three years, or redeem the same within one year after the Treasurer's sale thereof." If the land sold were not, at the time of sale, subject to assessment and sale for taxes. (*Doe Bell* v. *Reaumore*, 5 O. S. 433; *Street* v. *Kent*, 11 U. C. C. P. 255.) Or, if at any time before sale the taxes be paid, the sale would be invalid. (*Howe et ux.* v. *Thompson*, M. T. 6 Vic. MSS., R. & H. Dig., Taxes, 11; *Doe Bell* v. *Reaumore*, 3 O. S. 243; *Myers* v. *Brown*, 17 U. C. C. P. 307.) But the payment to be effective must be, as against the tax deed, proved to have been made to some officer entitled to receive it at the time when paid, (*Doe d. Sherwood et al* v. *Mattheson*, 9 U. C. Q. B. 321; *Jarvis* v. *Cayley*, 11 U. C. Q. B. 282; *Jarvis* v. *Brooke*, 11 U. C. Q. B. 299,) and be proved beyond reasonable doubt. (*Macdonald* v. *Rowe*, 9 U. C. C. P. 76.) If voluntarily paid, the money cannot be recovered back. (*Austin* v. *Simcoe*, 22 U. C. Q. B. 73; see also, *Street* v. *Simcoe*, 12 U. C. C. P. 284; s. c. 2 Er. & Ap. 211.)

In *Yokham* v. *Hall*, 15 Grant, 335, the late Chancellor held a tax sale for more than was due not to be final and binding under 27 Vic. cap. 19, sec. 4, from which this section was taken. But this decision was not very cordially approved of in *Edin. Life Assur. Co.* v. *Ferguson*, 32 U. C. Q. B. 268, where Wilson, J., said: "I do not see why the mere adding together of the two rates, and treating them as a single charge

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What lands only the treasurer shall sell.

**131.** The Treasurer shall not sell any lands which have not been included in the lists furnished by him to the clerks of the several Municipalities in the month of February preceding the sale, (*qq*) nor any of the lands which have been returned to him as being occupied under the provisions of the one hundred and fourteenth section of this Act, (*r*) except the lands, the arrears for which had been placed on

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on the whole lot, the sum on each half being exactly alike, and selling a part of the whole lot as for the one rate, so long as the two half lots are owned by the same person, should . . . defeat the sale openly and fairly conducted," &c. It is competent, where the sale is openly and fairly conducted, to sell the whole lot for taxes. (*Cotter* v. *Sutherland*, 18 U. C. C. P. 357.) The Court will not, in such a case, presume against a sale on the supposition that too much land was sold for a small amount. (*Ib.*) Sales made after the return day of the writ to sell, are valid. (*Ib.*) So where the sale has been openly and fairly conducted, it will be considered final, although it be shown that the land, though assessed as unoccupied, was occupied. (*Bank of Toronto* v. *Fanning*, 18 Grant, 391.) It is opposed to the policy of the law as recognized by the Court of Chancery that an officer having such important powers and duties with reference to the sale of land for taxes as the Treasurer, should himself be allowed to become a purchaser at such a sale. (*In re Cameron*, 14 Grant, 612.) But the Court of Common Pleas has held that there is nothing to prevent the party assessed, if desirous for any purpose to obtain a tax title, to omit paying the taxes and himself become the purchaser at such a sale. (*Stewart* v. *Taggart*, 22 U. C. C. P. 284.) This would not, at all events, avail in Equity, where the person omitting to pay taxes is the tenant for life, designing to acquire the reversion through his own wrong. (See *Munro* v. *Rudd*, 20 Grant, 55.) It is now held, notwithstanding what is said to the contrary in *Ford* v. *Proudfoot*, 9 Grant, 478, that the corporation of the local Municipality is not a necessary party to a bill impeaching a tax sale. (*Black* v. *Harrington*, 12 Grant 175; *Mills* v. *McKay*, 14 Grant, 602.) One Tripp, being owner of certain land, executed a marriage settlement under which his wife was entitled to the land for her life. The taxes afterwards fell in arrear, and the land was sold by the Sheriff to pay them. By arrangement with the purchasers, Tripp's widow became entitled to their interests in the property. She sold to the defendant. In a suit by the assignee of Tripp's heirs to set aside this sale, defendant claimed to be a purchaser for value, without notice. The same solicitor acted for vendor and vendee. This solicitor knew then, and before, that Tripp had been the owner, and that he had executed a marriage settlement under which the wife was tenant for life only; but he did not know or suspect she was bound to pay the taxes for which the land was sold, and he did not communicate to defendant that she was under such an obligation. Held, that defendant was not affected by constructive notice of the liability. (*Munro* v. *Rudd*, 20 Grant, 55.)

(*qq*) See note *g* to sec. 110 of this Act.

(*r*) See note *w* to sec. 114 of this Act.

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the collection roll of the preceding year and again returned unpaid and still in arrears, in consequence of insufficient distress being found on the lands. (*s*)

County treasurer to prepare list of lands to be sold, and advertise in "Gazette."

**132.** The County Treasurer shall (*t*) prepare a copy of the list of lands to be sold, required by section one hundred and twenty-eight of this Act, and shall include therein, in a separate column, a statement of the proportion of costs chargeable on each lot for advertising, and for the commissions authorized by this Act to be paid to him, distinguishing lands as patented, unpatented, or under lease or license of occupation from the Crown, and shall cause such list to be published four weeks in the Ontario *Gazette*, and once a

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(*s*) See note *d* to sec. 116 of this Act.

(*t*) The duties of the County Treasurer, under this section, are the following:

1. To prepare a copy of the list of lands to be sold, required by sec. 128 of this Act.
2. To include therein, in a separate column, a statement of the proportion of costs chargeable on each lot for advertising, and for the commissions authorized by this Act to be paid him, distinguishing lands as patented, unpatented, or under lease from the Crown.
3. To cause such list to be published four weeks in the Ontario *Gazette*, and once a week for thirteen weeks in some newspaper published within the County, and in the case of a union of Counties, in each County of the union, if there be one published in each County, and if not in such County or Counties in the union in which a newspaper is published, or if none is so published, in some other newspaper published in some adjoining County.

It was, under the 13 & 14 Vic. cap. 67, held that the omission of the Sheriff to advertise did not affect the validity of a sale for taxes, but should be treated merely as a direction of the statute which the officer was bound to observe at his peril. (*Jarvis* v. *Cayley*, 11 U. C. Q. B. 282; *Jarvis* v. *Brooke*, 11 U. C. Q. B. 299.) Such is now unquestionably the law in the case of a sale by a Sheriff under writ of execution. (*Paterson* v. *Todd*, 24 U. C. Q. B. 296.) But in a case decided under the 16 Vic. cap. 182, it was held that an advertisement in a local paper was equally necessary with an advertisement in the official *Gazette*, and for want of it the sale was held invalid. (*Williams* v. *Taylor*, 13 U. C. C. P. 219.) And in a case decided under Con. Stat. U. C. cap. 55, the Court of Queen's Bench, in referring to *Williams* v. *Taylor*, said, "If it were necessary for the decision of this case, we should, as at present advised, arrive at the same conclusion." (*Hall* v. *Hill*, 22 U. C. Q. B. 584.) But such an irregularity was held not to void the sale in *Cotter* v. *Sutherland*, 18 U. C. C. P. 357, and afterwards in *Connor* v. *Douglass*, 15 Grant, 456, by the Court of Appeal. The law is now settled according to the decision of the Court of Appeal. (*McLauchlin* v. *Pyper*, 29 U. C. Q. B. 526.)



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week, for thirteen weeks, in some newspaper published within the County, and in the case of a union of Counties, in each County of the union, if there be one published in each County, and if not in such County or Counties of the union in which a newspaper is published, or if none be so published, in some other newspaper published in some adjoining County. (33 V. c. 27, s. 11.)

Proceedings when lands in arrears for taxes in junior county separated from union of counties.

2. When a junior County has separated, or shall hereafter separate, from a union of Counties after a return is made to the Treasurer of the united Counties of lands in arrear for taxes, but such lands have not been advertised for sale by the Treasurer of the united Counties or senior County, such Treasurer shall return to the Treasurer of the junior County a list of all the lands within the junior County returned as in arrears for taxes, and not advertised, and the Treasurer and Warden of the junior County shall have power respectively to take all the proceedings which Treasurers and Wardens, under this Act, can take for the sale and conveyance of lands in arrear for taxes; (*u*) but in case the lands in such junior County have been advertised by

(*u*) Before this subsection, there was a doubt as to the proper officer—the Treasurer of the new County, or the Treasurer of the old County—to proceed to the sale of lands situate in a junior County, subject to arrears of taxes due to the union. By analogy to procedure after the separation of united Townships, it was generally supposed that all power as to the collection of assets, &c. (the power to collect involving the power to sell, see note *i* to sec. 171), would remain with the senior County, unless expressly diverted in favour of the junior County by Act of Parliament. (See secs. 158, 159.) This subsection appeared to have been based upon such an assumption, for it makes a transfer of the power to the junior County under certain circumstances. It is declared if the separation be after a return is made to the Treasurer of the united Counties of lands in arrears for taxes, *but such lands have not been advertised for sale* by the Treasurer of the united Counties or senior County, such Treasurer shall return to the Treasurer of the junior County a list of all the lands within the junior County returned as in arrear for taxes but not advertised, and the Treasurer of that County is authorised to proceed to sell. But in case the lands in the junior County *have been advertised* by the Treasurer of the united Counties before the separation, the sale of such lands shall be completed in the same manner as if the separation had not taken place. But in a recent case the Court of Common Pleas decided that until the passing of this enactment there was no power either in the Treasurer of the senior or junior County, or in any other officer, to sell lands for taxes that accrued due before the separation; and that the power can only now be exercised under this enactment, which is held to be retrospective. (*Canada Permanent Building Society* v. *Agnew*, C. P., E. T. 1873.)

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the Treasurer of the united Counties before such separation, the sale of such lands shall be completed in the same manner as if the separation had not taken place.

Notice to be given in such advertisement.

**133.** The advertisement shall contain a notification that unless the arrears and costs are sooner paid, he will proceed to sell the lands for the taxes on a day and at a place named in the advertisement. (*v*)

Time of sale

**134.** The day of sale shall be more than ninety-one days after the first publication of the list. (*w*)

Notice to be posted up.

**135.** The Treasurer shall also post a notice similar to the said advertisement in some convenient and public place, at the court-house of the County, at least three weeks before the time of sale. (*x*)

Expenses to be added to arrears.

**136.** The Treasurer shall in each case add to the arrears published, his commission and the cost of publication. (*y*)

Adjourning sale, if no bidders.

**137.** If, at any time appointed for the sale of the lands, no bidders appear, the Treasurer may adjourn the sale from time to time. (*a*)

Mode in which the lands shall be sold by the treasurer.

**138.** If the taxes have not been previously collected, or if no person appears to pay the same at the time and place appointed for the sale, (*b*) the Treasurer shall sell by public auction so much of the land as may be sufficient to discharge the taxes and all lawful charges incurred in and about the

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(*v*) This is directory—not imperative; therefore the omission of it will not invalidate the sale. (See note *t* to sec. 132 of this Act.)

(*w*) The expression is not that there shall be "ninety-one days" at least between the first publication and the sale, but that there shall be "*more* than ninety-one." (See note *g* to sec. 105 of the Municipal Institutions Act.)

(*x*) The omission to do as here directed would not invalidate the sale. The enactment is directory—not imperative. (See note *t* to sec. 132 of this Act.)

(*y*) So that a person intending to pay the arrears may, by inspection of the advertisement and without further or other inquiry, ascertain how much he must pay to prevent the sale. The amount of taxes stated in the advertisement is in all cases to be held the correct amount. (Sec. 138.)

(*a*) Even though bidders appear, if the Treasurer discover a combination among them, or has reason to believe that a combination exists, to prevent fair competition, it seems to be his duty to adjourn. (See note *q* to sec. 130 of this Act.)

(*b*) There can be no valid sale after payment of the taxes. (See note *q* to sec. 130 of this Act.)

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sale and the collection of the taxes; (*c*) selling in preference such part as he may consider best for the owner to sell

(c) The sale of part of a whole lot which lay in two concessions, for arrears alleged to be due on half, was held to be illegal. (*Doe Upper* v. *Edwards*, 5 U. C. Q. B. 594.) Where lots are included in one grant, but described by separate numbers, a portion of each lot must be sold to pay the taxes thereon. (*Munro et al* v. *Grey*, 12 U. C. Q. B. 647.) A grant having been issued for lot number 8 and three-quarters of lot number 7, the latter of which was not returned by the Government to the District Treasurer, as described, for grant, and the taxes on the whole of the grant having been paid, the Treasurer credited it to the *west* three quarters, and returned the *east* quarter as in arrear for taxes; held, that the taxes having been paid on all the land in the grant, the sale of the east quarter was illegal. (*Peck* v. *Munro*, 4 U. C. C. P. 363.) Lot 18 and the west half of lot 19, containing together two hundred acres, were granted to B. in one grant, and in the same year the east part of lot 19, described as containing one hundred and fifty-six acres, was granted to one S. B.'s land, being in arrear for the requisite period, was returned to the Treasurer as lot 18 and the west part of lot 19 (two hundred acres); and the Sheriff, in 1848, sold and conveyed one hundred and thirty-five acres of lot 19, which included part of the land granted to S. The sale was held illegal. (*McDonald* v. *Robillard*, 23 U. C. Q. B. 105.) It was held that the sale could not be upheld even as to that portion granted to B.; for lot 18 and the west part of lot 19 should each have been separately charged and sold for arrears. (*Ib.*) The east and west halves of lot 1, each containing one hundred acres, were granted by the Crown at different times and to different persons. The taxes being in arrear, lots 1 and 2 (four hundred acres) were returned as in arrear for £6 10s. taxes, without distinguishing that one portion of the taxes was on lot 1, and the remainder on lot 2, or upon the separate halves of lot 1. The Sheriff put up and sold the whole of lot 1 for the sum of £3 12s. 6d., being half the taxes on the whole, and 7s. 6d. for expenses. Held, the sale was void. (*Ridout et al* v. *Ketchum*, 5 U. C. C. P. 50.) The sale was held void, because a portion of the east half had been sold for taxes a portion whereof had accrued on the west half, and there were no means of apportionment. (*Ib.*) So where the north and south half of a lot of land were assessed separately, and different amounts charged against each half lot, which amounts were afterwards added together and charged against the whole lot, and a portion of the whole lot sold for the combined amounts, the sale was held illegal. (*Laughtenborough* v. *McLean*, 14 U. C. C. P. 175; see also, *Doe d. McGill* v. *Langton*, 9 U. C. Q. B. 91; *Black* v. *Harrington*, 12 Grant, 175; *Christie* v. *Johnston*, 12 Grant, 534.) The patent granted a lot by the north and south halves. The patentee, in 1853, conveyed the lot as a whole, and it continued in one owner till the sale of the 35 acres in 1858. In 1858 and 1859 each half was assessed separately. For the next three years it was assessed in two parcels of 165 acres and 35 acres, and for the succeeding two years the north half 100 acres and the west part south half 65 acres were assessed with a valuation of $330 on the whole. Held, right. (*Edinburgh Life Assurance Co.* v. *Ferguson et al*, 32 U. C. Q. B. 253.) In 1865, the 165 acres were sold for the

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first; (*d*) and in offering such lands for sale it shall not be necessary to describe particularly the portion of the lot which shall be sold, but it shall be sufficient to say that he will sell so much of the lot as shall be necessary to secure the payment of the taxes due; (*e*) and the amount of taxes stated in the Treasurer's advertisement shall, in all cases, be held to be the correct amount due. (*f*)

When land does not sell for full amount of taxes.

(2.) If the Treasurer fails at such sale to sell any land for the full amount of arrears of taxes due, he shall, at such sale, adjourn the same until a day then to be publicly named by him, not earlier than one week nor later than [three months] thereafter, (*g*) of which adjourned sale he

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taxes due for six years, including 1858, which was not covered by the warrant under which the 35 acres were sold for that year. Held, that the sale was bad. (*Ib.*) After a sale for taxes for 1859 and following years, a subsequent sale for taxes for 1858 was held invalid. (*Mills* v. *McKay*, 15 Grant, 192.) Where a warrant contained two different entries of the same lot for taxes due in two successive years, and the Sheriff at one sale sold for one year's taxes and at a subsequent adjourned sale sold the same lot for the second year's taxes, both sales were held void. (*Schaefer et ux.* v. *Lundy*, 20 U. C. C. P. 487; see further, note *q* to sec. 130 of this Act.)

(*d*) See note *q* to sec. 130.

(*e*) In *Knaggs* v. *Ledyard*, 12 Grant, 322, Mowat, V. C. said: "I must presume that the intention of the Legislature was, that a sheriff should let bidders know what part he is selling and they are buying. This is the reasonable course. And I find in the statute no trace whatever of an opposite course having been contemplated." This case was affirmed on appeal. (32 U. C. Q. B. 270, *note*.) Now, by the statute, an opposite course is not only contemplated, but expressly authorized. *Knaggs* v. *Ledyard* was decided before this amendment on the statute. Since the statute, the objection was renewed, but Hagarty, C. J., in *Stewart* v. *Taggart*, 22 U. C. C. P. 290, said: "As to the objection that at the sale no particular 89 acres was sold, it is cured by the statute 1868-9, sec. 138."

(*f*) An extract from the Treasurer's book showing the amount of taxes imposed, was held not to be sufficient evidence of the fact in an action of ejectment by a person claiming under a tax title. (*Munro* v. *Grey*, 12 U. C. Q. B. 647; see *Hall* v. *Hill*, 22 U. C. Q. B. 578; s. c. 2 Er. & Ap. 569.)

(*g*) Under certain circumstances, the Sheriff *may* adjourn a sale. (See note *n* to sec. 130 of this Act.) But under the circumstances here stated, he *shall* adjourn; that is, where he fails to sell *any* land for the *full* amount of the arrears of taxes due. Where a person attended a tax sale and offered to take twenty-nine acres of the lot and pay the full amount of taxes and expenses, and he was declared the highest bidder, but failed to pay the amount, and at an adjourned sale had the whole lot knocked down for the same amount, the sale was held to be void. (*Todd* v. *Werry et al*, 15 U. C. Q. B. 614.) But the better opinion appears to be that, in such a case, the legal estate, after a

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shall give notice by public advertisement in the local newspaper or in one of the local papers in which the original sale was advertised, (*h*) and on such day he shall sell such lands, unless otherwise directed by the local Municipality in which they are situate, for any sum he can realize, and shall accept such sum as full payment of such arrears of taxes; (*i*) but the owner of any land so sold shall not be at liberty to redeem the same except upon payment to the County Treasurer of the full amount of taxes due, together with the expenses of sale; (*k*) and the Treasurer shall account to the local Municipality for the full amount of taxes that shall be paid. (33 Vic. c. 27, s. 8.)

When treasurer sells land, the fee of which is in crown, he shall only sell the interest of lessee, &c.

**139.** If the Treasurer sells any interest in land of which the fee is in the Crown, he shall only sell the interest therein of the lessee, licensee or locatee, and it shall be so distinctly expressed in the conveyance to be made by the Treasurer and Warden; and such conveyance shall give the purchaser the same rights in respect of the land as the original lessee, licensee or locatee enjoyed, (*l*) and shall be valid, without requiring the assent of the Commissioner of Crown Lands.

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deed has been executed by the Sheriff, passes, and the sale can only be voided in Equity. (*Raynes et ux* v. *Crowder et ux*, 14 U. C. C. P. 111; *McAdie* v. *Corby*, 30 U. C. Q. B. 349.) If the purchaser fail immediately to pay the purchase money, it is the duty of the Treasurer forthwith again to put up the property for sale. (Sec. 140.) It would seem that the Sheriff may sue a purchaser for the amount of taxes, but in such an action it should be expressly averred that the defendant promised to pay for the land and accept a certificate within a reasonable time. (*Jarvis* v. *Cayley*, 11 U. C. Q. B. 282; but see *Mungaye* v. *Corbett*, 14 U. C. C. P. 557.)

(*h*) The sale will not be held invalid because of a defective notice of sale. (See note *t* to sec. 132 of this Act.)

(*i*) The power to sell at the first sale is only for the full amount of taxes. But at the adjourned sale the Treasurer may sell "for *any* sum he can realize." Neither the Treasurer nor the Corporation is responsible for the title of the land sold. (*Austin* v. *Simcoe*, 22 U.C. Q.B. 73.)

(*k*) See sec. 148 of this Act.

(*l*) Land vested in the Queen is exempt from taxation. (Sec. 9. sub. 1.) But where land is leased, sold or agreed to be sold by the Crown, or located as a free grant, the interest of the purchaser or locatee is liable to taxation. (Sec. 127.) Being liable to taxation, it is liable to sale, but the sale of course only passes the rights in respect to the land which the original lessee or locatee enjoyed. Such a sale, when followed by a deed, would, however, prevail against a patent subsequently issued to the original lessee or locatee, or a person claiming under him, (*Ryckman* v. *Van Voltenburgh*, 6 U. C. C. P. 385; *Charles* v. *Dulmage*, 14 U. C. Q. B. 585.)

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When purchaser fails to pay purchase money.

**140.** If the purchaser of any parcel of land fails immediately to pay to the Treasurer the amount of the purchase money, the Treasurer shall forthwith again put up the property for sale. (*m*)

Treasurer selling to give purchaser a certificate of land sold.

**141.** The Treasurer, after selling any land for taxes, shall give a certificate under his hand to the purchaser, stating (*n*) distinctly what part of the land, and what interest therein, have been so sold, (*o*) or stating that the whole lot or estate has been so sold, and describing the same, and also stating the quantity of land, (*p*) the sum for which it has been sold, and the expenses of sale, (*q*) and further, stating that a deed conveying the same to the purchaser or his assigns, according to the nature of the estate or interest sold, with reference to the one hundred and thirty-eighth and one hundred and thirty-ninth sections of this Act, will be executed by the Treasurer and Warden on his or their demand, at any time after the expiration of one year from the date of the certificate, if the land be not previously redeemed. (*r*)

Purchaser of lands sold for taxes to be deemed owner thereof, for certain purposes, on receipt of treasurer's certificate.

**142.** The purchaser shall, on the receipt of the Treasurer's certificate of sale, become the owner of the land, so far as to have all necessary rights of action and powers for protecting the same from spoliation or waste, until the expiration of the term during which the land may be redeemed; but he shall not knowingly permit any person to cut timber growing upon the land, or otherwise injure the land, nor shall he do so himself, but he may use the land without

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(*m*) See note *g* to sec. 138 of this Act.

(*n*) The certificate must—

1. State whether the whole or part, and if part, what part of the land has been sold.
2. State what interest therein has been sold.
3. Describe the land sold.
4. State the quantity sold.
5. State the sum for which it was sold.
6. State the expenses of sale, including commission. (See sec. 145.)
7. State that a deed conveying the same to the purchaser or his assigns will be executed on demand at any time after the expiration of one year from date, if land not previously redeemed. (See sec. 149.)

(*o*) See sec. 139 of this Act.

(*p*) See note *a* to sec. 146 of this Act.

(*q*) See note *i* to sec. 138 of this Act.

(*r*) See sec. 148 of this Act.

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Proviso.

deteriorating its value: (*s*) Provided that the purchaser shall not be liable for damage done without his knowledge to the property during the time the certificate is in force.

Effect of tender of arrears, &c.

**143.** From the time of a tender to the Treasurer of the full amount of redemption money required by this Act, the said purchaser shall cease to have any further right in or to the land in question. (*t*)

Treasurer's commission.

**144.** Every Treasurer shall be entitled to two and one-half per centum commission upon the sums collected by him as aforesaid. (*u*)

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(*s*) The certificate confers, as it were, a qualified ownership on the purchaser. He becomes the owner so far as to have all necessary rights of action and powers for protecting the land from spoliation and waste. He is not knowingly to permit any person to cut timber growing upon the land; nor can he himself cut timber on the land, or otherwise injure it. But he may use the land, so long as he does not deteriorate its value. If he injure the land, or knowingly permit it to be injured, no doubt he would be responsible to the owner in the event of the land being redeemed. But it is expressly declared that he is not to be held responsible for damage done without his knowledge. Under such a certificate the purchaser is entitled to the possession of the land sold, and being in possession he can avail himself of the certificate as a defence to an action of ejectment by the owner of the land. (*Cotter* v. *Sutherland*, 18 U. C. C. P. 357.) So it would seem that under such a certificate he may maintain ejectment against any one in possession under the former owner. (*Ib.*) In *McLauchlan* v. *Pyper*, 29 U. C. Q. B. 528, Wilson, J., said: "After the time for redemption has gone by, the certificate still continues in force, and the owner has lost his power to redeem. Between that time and the giving of the deed to the purchaser, could the purchaser take possession of the land or eject the former owner by authority of the certificate, or defend his possession against an action by a former owner? I think he could. Yet there is no greater right given to him by the statute to do any of these acts under the certificate, after the time for redemption has gone by, than while it is continuing. If the purchaser were to enter on a vacant lot for the purpose of using the land without deteriorating its value, could the owner, while he had still the right to redeem, eject the purchaser? I think he could not. The purchaser cannot use the land while another person is using it, and claims the right to use it adversely to him. The use referred to is the *usus fructus*, as distinguished from the *fidei commissum*, or what is technically called a use as allied with trusts. (2 Bl. Com. 327.) So it is like that kind of *use* of land for which an action for use and occupation will lie."

(*t*) The rights of the purchaser are described in note *s* to the preceding section. It is here declared that these rights shall cease "from the time of a tender to the Treasurer of the full amount of the redemption money required by this Act," but no provision is made for communicating the fact of such tender to the purchaser.

(*u*) The commission is "a lawful charge," within the meaning of sec. 138, so as to entitle the Treasurer to sell for it as well as the taxes in arrear. (See sec. 145 of this Act.)

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Fees, &c., on sales of land.

**145.** Whenever land is sold by a Treasurer, according to the provisions of the one hundred and thirty-second and following sections of this Act, he may add the commission and costs which he is hereby authorized to charge for the services above mentioned to the amount of arrears on those lands in respect of which such services have been severally performed, (*v*) and in every case he shall give a statement in detail with each certificate of sale, of the arrears and costs incurred. (*w*)

Expenses of search in registrar's office for description, &c.

**146.** The Treasurer shall, in all certificates and deeds given for land sold at such sale, give a description of the part sold with sufficient certainty; and if less than a whole lot, then by such a general description as may enable a surveyor to lay off the piece sold on the ground, (*a*) and he may

(*v*) The commission is in the nature of poundage, to be levied over and above the amount of taxes, and the Treasurer is only entitled to it when he has made the money. (See *Buchanan* v. *Frank*, 15 U. C. C. P. 196; s. c. 1 U. C. L. J. N. S. 124.)

(*w*) See note *n* to sec. 141 of this Act.

(*a*) The method prescribed by 6 Geo. IV., cap. 7, sec. 13, was, to begin at the front angle of the lot on that side whence the lots are numbered, and measure backwards, taking a proportion of the width, corresponding in quantity with the proportion of the particular lot in regard to its length and breadth, according to the quantity required to make the sum demanded. A deed thereunder of "thirty acres of lot, &c., to be measured according to the statute," was held to contain a sufficient description. (*Fraser* v. *Mattice et al*, 19 U. C. Q. B. 150; see also, *McIntyre* v. *Great Western Railway Co.*, 17 U. C. Q. B. 118.) But a description as "twenty-five acres of lot," &c., without more, was held insufficient. (*Cayley et al* v. *Foster*, 25 U. C. Q. B. 405.) So where the deed under the 6 Geo. IV. of 120 acres of a lot of land, contained two descriptions—the first a description by metes and bounds, which was not in accordance with the statute, and the other a general description in accordance with the statute—the latter was held to govern. (*McIntyre* v. *G. W. Railway Co.*, 17 U. C. Q. B. 118.) But the statute 13 & 14 Vic. cap. 67, which succeeded the 6 Geo. IV., which was repealed by 13 & 14 Vic. cap. 66, required a description by metes and bounds, and a deed, since that statute, of land sold under it not containing a description by metes and bounds, was held invalid. (*McDonell et al* v. *McDonald*, 24 U. C. Q. B. 74.) "West part of lot 31, in the 2nd con. of the Township of Enniskillen; that is to say, 185 acres thereof," held insufficient. (*Knaggs* v. *Ledyard*, 12 Grant, 320.) Affirmed on appeal. "South part of west half of lot 17, in 9th con. Rawdon, 75 acres," insufficient. (*Booth* v. *Girdwood*, 32 U. C. Q. B. 23.) "Part of south part 111, in 1st con. Tay, 40 acres," not sufficient. (*Grant* v. *Gilmour*, 21 U. C. C. P. 18.) "N. ½ and W. pt. S. ½, 165 acres," and "N. ½ 100 and W. pt. S. ½, 65 acres," held bad on the authority of *Knaggs* v. *Ledyard*. (*Edinburgh Life Assurance Co.* v. *Ferguson*, 32 U. C. Q. B. 253.) Wilson, J., said in the last case (p. 270): "I was one of the affirming Judges in that case (*Knaggs* v.

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make search, if necessary, in the Registry Office, to ascertain the description and boundaries of the whole parcel, and he may also obtain a surveyor's description of such lots, to be taken from the Registry Office or the Government maps, where a full description cannot otherwise be obtained, such surveyor's fee not to exceed one dollar; and the charges so incurred shall be included in the account and paid by the purchaser of the land sold, or the party redeeming the same. (*b*)

Treasurer entitled to no other fees.

**147.** Except as before provided, the Treasurer shall not be entitled to any other fees or emoluments whatever for any services rendered by him relating to the collection of arrears of taxes on lands. (*c*)

Owners may within one year redeem estate sold by paying purchase money and 10 per cent. thereon.

**148.** The owner of any land which may hereafter be sold for non-payment of arrears of taxes, or his heirs, executors, administrators or assigns, or any other person, (*d*) may at

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*Ledyard*); but I have since, in the case of *Booth* v. *Girdwood*, 32 U. C. Q. B. expressed my opinion that the judgment I then gave was not the one which I ought to have given, for that the west part of the south half of a lot containing 65 acres, is a defined portion of land, namely, the west 65 acres of a particular block of 100 acres." "West half" of the lot has been held good and sufficient. (*Bell* v. *McLean*, 18 U. C. C. P. 416, 419.) So "the N. *or* W. ½ 14," in a list under sec. 110 of this Act. (*Stewart* v. *Taggart*, 22 U. C. C. P. 284.) This section requires "a description of the part sold *with sufficient certainty*." This in the same section is defined as being "such *a general description* as may enable *a surveyor to lay off the piece sold on the ground*." A description by metes, bounds and courses, having relation to the boundaries and courses of the original lot, would be the best description. It would be prudent for the Treasurer in all cases, before making his deed, to obtain a surveyor's description of the piece sold. This, no doubt, would be sufficient to enable the same, if not any surveyor, to lay it off on the ground. Such a description could be made out by an examination of the boundaries of the whole lot, and the examination, if necessary, of the Registry Office. The Government maps may be examined where a full description cannot otherwise be obtained. Allowance is made by the section for a surveyor's fee, not to exceed $1, to be included in the Treasurer's account, and paid by the purchaser.

(*b*) See sec. 147 of this Act.

(*c*) It is a general principle that every fee to a public officer must have a legal origin (*Askin* v. *The London District Council*, 1 U. C. Q. B. 292); and where a statute allows certain specified fees to a public officer, none others are in general allowed. (See *Hooker et al* v. *Gurnett*, 16 U. C. Q. B. 180; *In re Davidson and Waterloo*, 22 U. C. Q. B. 405; see further, note *t* to sec. 219 of the Municipal Institutions Act.)

(*d*) The right to redeem is given to the owner of the land or his heirs, executors or administrators, or to any other person, whether

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any time within one year from the day of sale, exclusive of that day, (*e*) redeem the estate sold by paying or tendering to the County Treasurer, (*f*) for the use and benefit of the

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claiming title or not. Such was the law before the passing of this Act. (*Boulton* v. *Ruttan*, 2 O. S. 362; *Gilchrist* v. *Tobin*, 7 U. C. C. P. 141.)

(*e*) The time for redemption is "any time within one year from the day of sale, exclusive of that day." Where the sale took place on the 7th of October, 1840, payment of the redemption money on the 8th of October, 1841, was held too late. (*Proudfoot* v. *Bush*, 12 U. C. C. P. 52.) But payment on the 7th of October, 1841, would have been sufficient. (*Ib.*)

(*f*) In *Allan* v. *Hamilton*, 23 U. C. Q. B. 109, the land was sold in October, 1860. The land was sold for the taxes of 1855-6-7 and 1859, under a warrant dated 11th June, 1860. The amount paid by the purchaser was $31 51. In January, 1861, the owner of the land applied to the Treasurer to know the amount of taxes then due on the lot, and was told $37 48 for the years 1855 to 1860 inclusive. This was paid, and a receipt was taken for the taxes for those years. The Treasurer, in March, 1861, went to the Sheriff's office, and caused an entry to be made in the book of sales, opposite to the lot, that the taxes had been paid within two months after the sale, that he would pay the purchaser the redemption money, and that no deed was to be given. The purchaser was afterwards, and before any deed was given, told what had been done. But for some unexplained reason, a deed was, notwithstanding, given. Held, invalid. In *Payne* v. *Goodyear*, 26 U. C. Q. B. 448, an entire lot having been sold for taxes, a person paid the redemption on the east half, and a different person the redemption on the west half. It was afterwards represented to the Council that the last mentioned payment was a mistake, and the Treasurer having been ordered to refund, applied the money to a wholly different lot. Held, that the east half was properly redeemed. In giving judgment, Draper, C. J., said: "The power to sell land was created in order to collect a tax, and the same reason that influenced the Legislature to enable the true owner of a *part* to pay his proper part of the taxes on the whole lot, would exist in his favour to permit him to redeem (that part). . . We think it more in accordance with the spirit and intention of the Act to hold that the benefit conferred on owners of land, under the circumstances stated in the 113th section, should be treated as extending to owners similarly circumstanced as owning a subdivision of a lot, and to enable them to redeem on adducing satisfactory proof to the Treasurer of the subdivision. In our opinion, therefore, the payment received by the Treasurer of *the proportion* of the arrears of taxes for which lot 13 was sold—which would be, and in fact were, due in respect of the east half only—was an effectual redemption of *that half of the lot*. And we prefer to rest our conclusion in favour of the defendants on this ground, to entering upon the (to my apprehension) more doubtful question—on the payment made by mistake in the west half of the lot,—a payment which, at first glance, can hardly be said to have redeemed the lot, without holding that the form, not the substance, is to be considered by the Court," &c. If the owner, instead of paying the redemption money to the County Treasurer for the vendee, pays it to the latter person-

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purchaser or his legal representatives, the sum paid by him, together with ten per centum thereon; (*g*) and the Treasurer shall give to the party paying such redemption money a receipt stating the sum paid and the object of payment; and such receipt shall be evidence of the redemption. (*h*)

Deed of sale, if not redeemed.

**149.** If the land be not redeemed within the period so allowed for its redemption, being one year exclusive of the day of sale as aforesaid, (*i*) then, on the demand of the purchaser or his assigns or other legal representative, at any time afterwards, and on payment of one dollar, (*k*) the

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ally, and he accepts it, the payment is in equity as effectual to save the property as payment to the Treasurer would have been. (*Cameron* v. *Barnhart*, 14 Grant, 661.) So if the vendee verbally agrees to accept payment personally at a distance from the County Town, in lieu of its being made to the Treasurer for him, and the owner acts on this agreement, the other cannot afterwards, to the owner's prejudice, require payment of the money to the Treasurer, refuse to receive it himself when it is too late to pay it to the Treasurer, and insist on the land being forfeited. (*Ib.*) Where such an agreement was proved by a credible witness, but there was contradictory evidence as to whether what took place amounted to an agreement, the Court, holding that the presumption in a case of doubt must be in favour of fair dealing and not of forfeiture, gave the owner relief. (*Ib.*)

(*g*) When the redemption money is paid, it becomes the money of the purchaser, and not of the Municipality (*Wilson* v. *Huron and Bruce*, 8 U. C. L. J. 135; *Boulton* v. *York and Peel*, 25 U. C. Q. B. 21), and all rights of the purchaser in regard to the land cease from the time the money is paid or tendered to the Treasurer. (Sec. 143.) Where the purchaser, after the time for redemption is past, succeeds in equity in having the sale avoided, he will be made to do equity and pay the purchase money and ten per cent. thereon. (*Massingberd* v. *Montague*, 9 Grant, 92.)

(*h*) The receipt must state:

1. The sum paid.
2. The object of the payment.

And when these things are stated in it, and not otherwise, the receipt is made evidence of the redemption. The words are, "*such* (not *any*) receipt shall be evidence of the redemption." (See *Smith et al* v. *Blakey*, L. R. 2 Q. B. 326.)

(*i*) See note *e* to sec. 148 of this Act.

(*k*) On the demand of the purchaser, &c., and on payment of one dollar, it is incumbent on the Treasurer to prepare and execute (with the Warden) and deliver a deed in duplicate of the land sold. If he refuse to comply, an action will lie against him, at the suit of the purchaser, for the recovery of damages. (See *Spafford* v. *Sherwood*, 3 O. S. 441; see also *Boulton* v. *Ruttan*, 2 O. S. 362.) The deed may be in the form mentioned in schedule C to this Act, and shall have the effect mentioned in sec. 150. The deed may be demanded by an assignee of the purchaser. (See *Doe d. Bell* v. *Orr*, 5 O. S. 433.)

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Treasurer shall prepare and execute with the Warden, and deliver to him or them, a deed in duplicate of the land sold, in which (*l*) deed any number of lots may be included at the request of the purchaser, or any assignee of the purchaser. (*m*)

Contents of deed, and effect thereof.

**150.** Such deed shall be in the form or to the same effect (*n*) as in schedule C, (*o*) and shall state the date and cause of the sale, and the price, and shall describe the land according to the provisions of section one hundred and forty-six of this Act; (*p*) and shall have the effect of vesting the land in the purchaser or his heirs and assigns or other legal representatives, in fee simple or otherwise, according to the

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(*l*) The statute 6 Geo. IV. cap. 7, which authorized the sale of lands for taxes, by sec. 18 directed that if the land be not redeemed within twelve months from the time of sale, then the Sheriff *for the time being* shall, on demand of the purchaser, execute a conveyance, &c. The expression, "for the time being," is not used in this Act, and the question was raised, but not determined, as to the right of the Sheriff when out of office to execute such a deed. (*McMillan* v. *McDonald*, 26 U. C. Q. B. 454.) In *Bryant* v. *Hill*, 23 U. C. Q. B. 96, where lands were sold under the 6 Geo. IV. cap. 7, but no deed made until after that Act was repealed, it was held that the deed was invalid, as no provision had been made in the Act for such a case. The same point was also ruled in like manner in *McDonald* v. *McDonell et al*, 24 U. C. Q. B. 424. But it is now provided that in all cases where lands have been validly sold for taxes, then the conveyance by the Sheriff who made the sale, or his successors in office, shall not be invalid by reason of the statute under the authority whereof such sale was made having been repealed at and before the time of the conveyance, or by reason of the Sheriff who made the sale having gone out of office. (33 Vic. cap. 23, sec. 5, Ont.) The words "Treasurer" and "Warden," as used in the section here annotated, mean the persons who at the time of the execution of the deed may hold such offices. (37 Vic. cap. 19, sec. 7, Ont.)

(*m*) Unless the purchaser or his assignee otherwise request or direct, the Treasurer may execute a deed for each separate parcel of land sold, and for each such deed charge the sum of one dollar.

(*n*) Whenever the Legislature provides a form of a deed or other conveyance, that form should be as nearly as possible followed. (See note *h* to section 238 of the Municipal Institutions Act.

(*o*) In this section, as originally passed, there was a mistaken reference to the schedule B, instead of schedule C. The correction was made by stat. 34 Vic. cap. 28, sec. 4 (Ont.).

(*p*) The deed must *state*—

1. The date and cause of the sale;

2. The price;

*And describe* the land in accordance with the provisions of section 146 of this Act, which see, and notes thereto.

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nature of the estate or interest sold; (*q*) and no such deed shall be invalid for any error or miscalculation in the amount of taxes or interest thereon in arrear, or any error in describing the land as "patented" or "unpatented" or held under a license of occupation. (*r*) (See 34 V. c. 28, s. 4.)

Registration of deed.

**151.** The Registrar or Deputy Registrar of the County in which the lands are situated, upon production of the duplicate deed, (*s*) shall enter the same in the Registry book, and give a certificate of such entry and registration in accordance with the Act respecting Registrars and Registry Offices. (*t*)

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(*q*) The form of the deed is one thing; its effect, another. It is declared that the deed *shall* be in the form given, and when in such form *shall* have the effect of vesting the land in the purchaser in fee simple or otherwise, according to the estate or interest sold. See sec. 139 and notes thereto.) It is not declared, as was declared in Con. Stat. U. C. cap. 55, sec 150, that the deed shall vest the land in the purchaser, "free and clear of all charges and incumbrances thereon;" but, considering that the taxes accrued on any land are by sec. 107 made a special lien thereon, having preference over all claims, liens, privileges or incumbrances to any party except the Crown, it is reasonable to intend that it shall convey the land free of incumbrances.

(*r*) In other words, the deed, notwithstanding errors or miscalculations such as specified, shall be valid. (See further, as to the binding effect of the deed, secs. 130 and 155 of this Act, and notes thereto.)

(*s*) The provisions of the Registry Act are as much applicable to deeds of this kind as any other deeds. (See *Doe Brennan* v. *O'Neil*, 4 U. C. Q. B. 8.) But no proof of execution is apparently necessary in order to satisfy the Registrar. He is, "*upon production* of the duplicate deed, to enter the instrument in the Registry book." He is bound to give a certificate of the entry and registration. Special provision is also, by this Act, made for the registration of deeds of land sold before the 1st January, 1851 (sec. 152), or sold between the 1st January, 1851, and prior to the 1st January, 1866. (Sec. 153.)

(*t*) It was declared by the Registry Act of 1865, which was passed on the 18th September of that year, that every deed made by a Sheriff or other officer for arrears of taxes should be registered within eighteen months after the sale by such Sheriff or other officer, . . . otherwise the parties claiming under authority of such sale should not be deemed to have preserved their priority against a purchaser in good faith, who may have registered his deed prior to the registration of such deed from the Sheriff or other officer. (Stat. 29 Vic. cap. 24, sec. 56.) It was, by the same statute, declared that all deeds for lands sold for taxes before the passing of the Act should be registered within one year after the passing of the Act, on peril of losing priority as against a purchaser in good faith, who may have acquired priority of registration. (*Ib.* sec. 57.) This Act was repealed and, in substance, re-enacted by 31 Vic. cap. 20, Ont. Sec. 58 of the last mentioned is a transcript of sec. 56 of the first mentioned

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On what certificate registrars of counties to register sheriff's deeds of lands sold for taxes before 1851.

**152.** As respects land sold for taxes before the first day of January, one thousand eight hundred and fifty-one, on the receipt by the Registrar of the proper County or place of a certificate of the sale to the purchaser, under the hand and seal of office of the Sheriff, stating the name of the purchaser, the sum paid, the number of acres and the estate or interest sold, the lot or tract of which the same forms part, and the date of the Sheriff's conveyance to the purchaser, his heirs, executors, administrators or assigns, (*u*) and on production of the conveyance from the Sheriff to the purchaser, his heirs, executors, administrators or assigns, such Registrar shall register any Sheriff's deed of land sold for taxes before the first day of January, one thousand eight hundred and fifty-one, and the mode of such registry shall be the entering on record a transcript of such deed of conveyance. (*v*)

The sheriff to have certificate of execution of conveyances since Jan. 1st, 1851, for registration.

**153.** As respects land sold for taxes since the first day of January, one thousand eight hundred and fifty-one, and prior to the first of January, one thousand eight hundred and sixty-six, the Sheriff shall also give the purchaser or his assigns, or other legal representatives, a certificate under his hand and seal of office of the execution of the deed, containing the particulars in the last section mentioned; (*w*) and such certificate, for the purpose of registration in the Registry Office of the proper County of any deed of lands sold for taxes since the first of January, one thousand eight

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Act. So sec. 59 of the last mentioned is a transcript of sec. 57 of the first mentioned Act; and being so, a question may arise under the last mentioned section, whether it had not the effect of extending the period for the registration of all deeds *at any time* made *before* 1868 until one year thereafter, notwithstanding the provision of the Act of 1865, which required registration of all deeds before then (18th September, 1865) executed, to be registered within one year thereafter.

(*u*) Deeds of land sold under this Act are to be registered on mere production of the duplicate. (Sec. 151.) But where the sales took place before the 1st January, 1851, a certificate under the hand and seal of office of the Sheriff is *in addition* required. Such certificate must state:

1. The name of the purchaser;
2. The sum paid;
3. The number of acres, and the estate or interest sold;
4. The lot or tract of land of which the same forms part;
5. The date of the Sheriff's conveyance to the purchaser.

(*v*) See note *t* to sec. 151 of this Act.

(*w*) See note *u* to last section.

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hundred and fifty-one, shall be deemed a memorial thereof; and the deed shall be registered; and a certificate of the registry thereof shall be granted by the Registrar on production to him of the deed and certificate, without further proof; (*x*) and the Registrar shall, for the registry and certificate thereof, be entitled to seventy cents and no more. (*y*)

Treasurer to enter in a book descriptions of lands conveyed to purchaser by him.

**154.** The Treasurer shall enter in a book, which the County Council shall furnish, a full description of every parcel of land conveyed by him to purchasers for arrears of taxes, with an index thereto; and such book, after such entries have been made therein, shall, together with all copies of collectors' rolls and other documents relating to non-resident lands, be by him kept amongst the records of the County. (*a*)

Deed valid against all parties, if not questioned within a certain time.

**155.** Whenever lands shall have been or may be hereafter sold for arrears of taxes, and the Sheriff or Treasurer, as the case may be, shall have given a deed for the same, (*b*)

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(*x*) See note *t* to sec. 151 of this Act.

(*y*) See note *c* to sec. 147 of this Act.

(*a*) Entries made in such a book, as to the particulars mentioned, might, in the event of the death of the Registrar, be evidence of the facts therein contained. (See *Smith et al* v. *Blakey*, L. R. 2 Q. B. 326.)

(*b*) There is a long list of cases reported in the Queen's Bench, Common Pleas, and Chancery Reports, in which sales for taxes have proved ineffectual, owing to the want of strict attention to the language of the statutes under which the sales took place, on the part of the officers required to carry the law into execution. Such a state of things was animadverted upon by the present Chief Justice of Appeal, in *McDonell* v. *McDonald*, 24 U. C. Q. B. 80. The Legislature, from time to time, has interfered to settle tax titles.

(1.) In 1863 was passed the 27 Vic. cap. 19, which in sec. 4, among other things, enacted that if any taxes in respect of any lands sold after the passing of the Act shall have been in arrears for five years, and the same shall not be redeemed in one year after the sale, such sale and the Sheriff's deed to the purchaser of the lands (provided the sale was openly and fairly conducted) shall be final and binding. This was re-enacted in sec. 131 of 29 & 30 Vic. cap. 53, and corresponds with the section which is now numbered 130 of this Act.

(2.) In 1865 was passed the 29 Vic. cap. 26, which in sec. 1 enacted that in all cases where lands were legally sold for taxes under 13 & 14 Vic. cap. 67, and not redeemed within the period in that behalf limited, and the purchaser, or those claiming under him, shall have gone into actual possession, such sales shall be legal and binding, &c. In all cases where the purchaser, &c., had not gone into possession,

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such deed shall be, to all intents and purposes, valid and

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one year from the passing of the Act was given for the redemption of the land, and in default thereof the sales were declared to be legal and binding upon all parties concerned. This was the origin of sec. 156 of the 29 & 30 Vic. cap. 53, and of sec. 156 here annotated. But while sec. 156 of 29 & 30 Vic. allowed *four* years, the section here annotated only allows *two* years as the period of limitation.

3. In 1869 was passed the 33 Vic. cap. 23, Ont., which by sec. 1 declared that in all cases where lands which were liable to be assessed have been sold or conveyed under colour of the statutes for taxes in arrear, and the tax purchaser had, prior to 1st November, 1869, gone into and continued in occupation of the land, or any part thereof, for at least four years, and had made improvements to the value of two hundred dollars, the sale was declared valid, notwithstanding certain formal defects. And the section was by sec. 2 made applicable in cases in which the tax purchaser had, since the sale and prior to 1st November, 1869, paid at least eight years' taxes on the land, provided the owner had not occupied for one year between the sale by the Sheriff and the 1st of November. But it was declared that the section should not apply—

(a) If the taxes for non-payment whereof the lands were sold had been fully paid before the sale.
(b) If within the period limited by law for redemption the amount paid by the purchaser, with all interest, had been paid or tendered.
(c) Where, on the ground of fraud or evil practices at the sale, a Court of Equity would grant relief.
(d) Where the possession had been actually changed under process of law or otherwise.
(e) Where the owner, at the time of sale, was in occupation of the lands, &c. (Sec. 7.)
(f) Cases of proceedings pending at Law or in Equity when the Act was passed were allowed to be carried on, *as regards the right to costs*, in the same manner as if the Act had not been passed. (Sec. 4.)

Other provisions were made by the Act not necessary to be here mentioned, with one exception, and that is a declaration that in any case in which the title of the tax purchaser is not made valid by the Act, he shall have a lien for the purchase money paid at the sale, and interest thereon at the rate of ten per cent. per annum, and for the amount of all taxes paid by him since the sale with interest at the same rate, to be enforced in such manner as the Court of Chancery shall think proper. (Sec. 13.)

The cases decided under the Act of 1863 will be found noted to sec. 130 of this Act.

It was decided that the section here annotated does not apply so as to make valid a deed given in pursuance of a sale for taxes where there are, in fact, no taxes in arrear. (*Hamilton* v. *Eggleton*, 22 U. C. C. P. 536.) Gwynne, J., in giving judgment, said: "The object of the clause relied upon was—as its language appears to me plainly to express, and as is consistent with the whole tenor of the Act—to provide that *when lands became liable to be sold for arrears of taxes*,



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binding, except as against the Crown, if the same has not

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and were sold to recover such arrears, a deed should be given in pursuance of such sale, that such deed should not be questioned for any irregularity or defect whatever unless within the prescribed period. . . The Act 33 Vic. cap. 23, Ont., which was an Act passed for the purpose of making valid, in certain cases, invalid sales, 'under colour of the statutes for taxes in arrear,' does not confirm a sale under the circumstances admitted to attend the sale in this case. . . . Now, if this sale be not—and it clearly is not—made valid by an Act passed for the express purpose of making valid illegal sales 'under *colour* of the statutes for taxes in arrear,' how can it be said to be valid by an Act which, in the given circumstances, never contemplated any sale taking place or any deed being executed? The verdict for the plaintiff should not, I think, be disturbed, as, in my opinion, the 155th section of the Statute of Ontario, 32 Vic. cap. 36, upon which clause alone the defendant relies, has no reference to the case of a deed given in pursuance of a sale when all the taxes assessed upon the land purported to be sold had been fully paid and satisfied before the sale, but *only* to cases of deeds given in pursuance of sales where *some* tax upon the land sold was in arrear." The same Court afterwards held that the section did not apply to a case where land situate in a junior County, subject to taxes, and in arrears for taxes to the union, was before subsection 2 of section 132 sold and conveyed by the Treasurer of the senior County. (*Canada Permanent Building Society* v. *Agnew*, C. P. E. T. 1873.) In *Edinburgh Life Assurance Co.* v. *Ferguson*, 32 U. C. Q. B. 253, where, among other defects in the tax deed, which was given on 17th May, 1866, there was a defective description, the Court said: "It was contended that by the 29 & 30 Vic. cap. 53, sec. 156, the Sheriff's deed given on 17th May, 1866, was to all intents and purposes valid and binding on the plaintiffs, because it had not been questioned by them within four years after the passing of the Act of 15th August, 1866." (*Ib.* 269.) But the Court added, "It appears to us that the Act just mentioned (sec. 155 of 32 Vic. cap. 36 Ont.), when it gave to those who were interested in such lands a period of two years after the passing of the Act to prosecute their claims, gave to those whose rights were not *they* barred by any period of prescription, the period of two years expressly allowed to them as the new and substituted limitation as fixed by the former Act." (*Ib.* 270; see further, *Connor* v. *McPherson*, 18 Grant, 607.)

In *Fraser* v. *West*, 21 U. C. C. P. 161, which was decided under the Act of 1869, thirdly above mentioned, the Court of Common Pleas decided that it is not incumbent under that Act for the tax purchaser, for the purpose of bringing himself within the protection of the Act in cases where he has paid eight years' taxes charged on the land, to prove that the taxes so paid were legally charged, but that it was sufficient to produce the Treasurer's books showing that such taxes had been charged and paid. It was also in the same case held that any person claiming under the tax purchaser may avail himself of the provisions of the Act. In *McAdie* v. *Corby*, 30 U. C. Q. B. 349, which was an action of ejectment to try the validity of a tax title, the Court, under sec. 4 of the 33 Vic. cap. 23, determined the objection taken to the sale, in order to settle the right to costs, in the same manner as if the Act had not been passed.

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been questioned before some Court of competent jurisdiction, by some person interested in the land so sold, within two years after the passing of this Act, when the land was sold and a deed given by the Sheriff or Treasurer before the passing of this Act, or within two years from the time of sale, when such sale shall take place after the passing of this Act.

Non-resident land fund.

**156.** The Council may by By-law direct that all the moneys received by the County Treasurer on account of taxes on non-resident lands shall be paid at stated periods to the several local Municipalities to which such taxes were due, or shall constitute a distinct and separate fund, to be called the "Non-Resident Land Fund" of such County. (*c*) [Provided that, in the absence of any such By-law, the County Treasurer shall pay over to the local Treasurer all such moneys when so collected.] (*d*) (33 V. c. 27, s. 10.)

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(*c*) The Treasurer of the County is the person on whom the law throws the duty of collecting such taxes as are shown to be in arrear by the collector's rolls, received by him from the several Townships, after all efforts have failed to collect in the Townships, in consequence of the owner having been a non-resident, or there being no sufficient distress on the land. (*Per* McLean, C. J., in *Austin* v. *Simcoe*, 22 U. C. Q. B. 75.) All money received by him on account of taxes of non-residents may either, under By-law of the County Council, be at once distributed among the several local Municipalities to which the taxes are due, or constitute a fund known as the "Non-Resident Land Fund." (Sec. 166.) Though subject, for certain purposes, to the control of the County Council (see *Robertson* v. *Wellington*, 27 U. C. Q. B. 336), who may issue debentures on the credit of it (secs. 163 and 164), it is in no sense the money of the Council. (*Wilson* v. *Huron and Bruce, Bank of Montreal garnishees*, 8 U. C. L. J. 135; *same parties, Macdonald garnishee* 136; *Austin* v. *Simcoe*, 22 U. C. Q. B. 73; *Boulton* v. *York and Peel*, 25 U. C. Q. B. 21.) The Treasurer must, when a fund has been created, open an account for each local Municipality with the fund (sec. 157); and in the event of a union of local Municipalities being afterwards dissolved, must open an account with each. (Sec. 158.)

(*d*) The words placed in brackets were added to the section by stat. 33 Vic. cap. 27, sec. 10, Ont. Before the amendment was made, it was held that local Municipalities were not entitled to recover the moneys either from the County (*Mara* v. *Ontario*, 13 Grant, 347) or the Treasurer (*Nottawasaga* v. *Boys*, 21 U. C. C. P. 106) until the passage of a By-law properly apportioning the money. It is now by the section as amended made the duty of the *County Treasurer*, in the absence of any such By-law, to pay over to the local Treasurer all moneys received on account of non-resident lands in any local Municipality, *when so collected*. The Corporation of the County is responsible for the due accounting of the fund by the Treasurer. (See note *a* to sec. 197 of this Act.)

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Treasurer to open an account therefor.

**157.** The Treasurer shall, when such fund may have been created, open an account for each local Municipality with the said fund. (*e*)

Municipalities united and afterwards, disunited, &c.

**158.** If two or more local Municipalities, having been united for Municipal purposes, be afterwards disunited, or if a Municipality or part of a Municipality be afterwards added to or detached from any County, or to or from any other Municipality, the Treasurer shall make corresponding alterations in his books, so that arrears due on account of any parcel or lot of land at the date of the alteration shall be placed to the credit of the Municipality within which the land, after such alteration, is situate; (*f*) and if a union of Counties is about to be dissolved, all the taxes on non-residents' land imposed by By-laws of the provisional Council of the junior County shall be returned to and collected by the Treasurer of the united Counties, and not by the provisional Treasurer; (*g*) and the Treasurer of the united Counties shall open an account forthwith for the junior County with the Non-Resident Land Fund. (*h*)

When any union about to be dissolved.

New municipalities partly in one county and partly in another.

**159.** In cases where a new Municipality shall be formed partly from two or more Municipalities situate in different

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(*e*) See note *d* to sec. 156 of this Act.

(*f*) The Non-Resident Land Fund represents the several lots of land in respect of which the taxes have been collected. The Municipality in which the lots of land may be situate at the time of the distribution of the money, is to get the money. The Treasurer, in the event of a dissolution of a union of local Municipalities or other alterations, is required by this section to make corresponding alterations in his books, "so that arrears due on account of any parcel or lot of land at the date of the alteration shall be placed to the credit of *the* Municipality within which the land, after such alteration, *is situate.*"

(*g*) It was generally supposed that the Treasurer of the senior County would, after a dissolution of the union of Counties, be the proper person to collect taxes due to the union before the dissolution, and to take all proceedings necessary to that end. But the Court of Common Pleas has recently decided that until the passing of subsection 2 of sec. 132, there was no officer having the necessary powers to enforce the collection of arrears of taxes in the case supposed by sale of the land in respect to which the arrears were due. (See note *u* to sec. 132 of this Act.) By this part of the section annotated, it is declared that if a union of Counties is *about* to be dissolved, all the taxes on non-resident lands imposed by By-laws of the provisional Council of the *junior* County shall be returned to and collected by the Treasurer of the united Counties, and *not* by the Treasurer of the provisional County.

(*h*) See note *c* to sec. 156 of this Act.

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Counties, the collection of non-resident taxes due at the time of formation shall remain in the hands of the Treasurer of the respective Counties formerly having jurisdiction over the respective portions of territory forming the new Municipality; (*i*) and the respective Treasurers shall keep a separate account of such moneys, and pay the same to the new Municipality; (*k*) and where a new Municipality shall be formed from two or more Municipalities situate in any one County, the Treasurer shall, in like manner, keep a separate account for such new Municipality. (*l*)

All arrears to form one charge upon lands subject to them, etc.

**160.** The Treasurer of the County shall not be required to keep a separate account of the several distinct rates which may be charged on lands, but all arrears, from whatever rates arising, shall be taken together and form one charge on the land. (*m*)

Deficiencies in certain taxes to be supplied by the municipality.

**161.** Every local Municipal Council, in paying over any school or local rate, or its share of any County rate, or of any other tax or rate lawfully imposed for Provincial or local purposes, shall supply out of the funds of the Municipality any deficiency arising from the non-payment of the taxes, (*n*) but shall not be held answerable for any deficiency arising from the abatements of, or inability to collect, the tax on personal property. (*o*)

Money from land fund how appropriated.

**162.** All sums which may at any time be paid to a Municipality out of the Non-Resident Land Fund of the

(*i*) See note *f* to sec. 158 of this Act.

(*k*) See note *d* to sec. 156 of this Act.

(*l*) See note *d* to sec. 156 of this Act.

(*m*) The several rates are only needed for the purposes of the local Municipality, and for distribution by it to the several purposes for which the money is raised. The local Municipality often finds it necessary to advance out of its general funds, moneys charged against non-resident lands, and await the collection thereof by the County Treasurer (sec. 161), and when the money is received from the County Treasurer, who knows nothing of the several rates, it may be applied to make good the advance out of the general funds of the local Municipality, and form part of its general funds. (Sec. 162.)

(*n*) See note *h* to sec. 13 of this Act.

(*o*) Real property is fixed; personal property is moveable. There is full security for the collection of a moderate rate due in respect of the one, and not much in respect of the other. Hence, while the duty is imposed to supply out of the funds of the Municipality any deficiency arising from non-payment of the former, the rule is not made to extend to deficiencies arising from abatements of, or inability to collect the latter.

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County, shall form part of the general funds of such Municipality. (*p*)

Debentures may be issued on the credit of non-resident land fund.

**163.** The Council of the County may (*q*) from time to time, by By-law, authorize the Warden to issue, under the corporate seal, upon the credit of the Non-Resident Land Fund, debentures payable not later than eight years after the date thereof, and for sums not less than one hundred dollars each, so that the whole of the debentures at any time issued and unpaid do not exceed two-thirds of all arrears then due and accruing upon the lands in the County, together with such other sums as may be in the Treasurer's hands, or otherwise invested to the credit of the said fund; (*r*) and all debentures issued by the County shall be in the exclusive custody of the Treasurer, who shall be responsible for their safety until their proceeds are deposited with him. (*s*)

Who to have charge of them.

By whom to be negotiated.

**164.** Such debentures shall be negotiated by the Warden and Treasurer of the County, and the proceeds shall be paid into the said fund, and the interest on the said debentures, and the principal when due, shall be payable out of such fund: (*t*) Provided always, that the purchaser shall not be bound to see to the application of the purchase money, or be held responsible for the non-application thereof.

Proviso.

Provision for payment of interest on such debentures.

**165.** If at any time there be not in the Non-Resident Land Fund, where such fund may have been created, money sufficient to pay the interest upon a debenture, or to redeem the same when due, such interest or debenture shall be payable out of the general County funds, (*u*) and the payment

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(*p*) See note *m* to sec. 160 of this Act.

(*q*) *May*, &c. Permissive—not obligatory. See note *b* to sec. 412 of the Municipal Institutions Act.

(*r*) Debentures, when regularly issued, are transferable by delivery. See section 296 of the Municipal Institutions Act, and notes thereto.

(*s*) The Treasurer being especially and peculiarly the officer entrusted with the collection of the money that constitutes the fund. (See note *c* to sec. 156 of this Act.)

(*t*) The fund is intended to meet in advance the wants of the local Municipalities, and not in any way to be a source of revenue or gain to the Corporation of the County. (See note *c* to sec. 156 of this Act.) But it is very properly here provided, that the purchaser of a debenture shall not be bound to see to the application of the purchase money, or be held responsible for the non-application thereof.

(*u*) The debenture, though issued on the security of a particular fund, is in reality the promise of the County, and so the County is

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thereof may be enforced in the same manner as is by law provided in the case of other County debentures. (*v*)

Surplus of the non-resident land fund to be divided among municipalities.

**166.** The Council of the County may from time to time pass By-laws apportioning the surplus moneys in the Non-Resident Land Fund amongst the Municipalities ratably, according to the moneys received and arrears due on account of the non-resident lands in each Municipality; (*a*) but such apportionment shall always be so limited that the debentures unpaid shall never exceed two-thirds of the whole amount to the credit of the fund. (*b*)

Treasurer's percentage or salary, how paid.

**167.** The Treasurer shall not be entitled to receive from the person paying taxes any percentage thereon, (*c*) but may receive from the fund such percentage upon all moneys in his hands, or such fixed salary (*d*) in lieu thereof, as the County Council may by By-law direct.

Annual statements of fund to be submitted to councils.

**168.** The County Treasurer shall prepare and submit to the County Council, at its first session in January in each year, (*e*) a report, certified by the auditors, of the state of the Non-Resident Land Fund. (*f*)

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bound to advance out of general County funds money sufficient to pay interest.

(*v*) The ordinary mode of enforcing payment of debentures is by action. (See *Trust and Loan Co.* v. *Hamilton*, 7 U. C. C. P. 98; *Anglin* v. *Kingston*, 16 U. C. Q. B. 121; *Crawford et al* v. *Cobourg*, 21 U. C. Q. B. 113.)

(*a*) The Legislature has entrusted the Municipal Council—the County Parliament—with the duty of apportioning the surplus funds among the Municipalities ratably, according to the moneys received and arrears due on account of the non-resident lands in each Municipality. If there were no legislation to the contrary, the Council would be held to have the discretionary power to say by By-law when the money is to be paid over. But it is by statute made the duty of the County Treasurer to pay over to the Treasurers of the local Municipalities all such moneys when collected. (See note *d* to sec. 156 of this Act.)

(*b*) This is a restriction. A By-law contrary to this restriction could not be supported. The object of the restriction is plainly to afford security for the due payment of unpaid debentures.

(*c*) See note *c* to sec. 147 of this Act.

(*d*) It is left in the discretion of the County Council to pay the County Treasurer either by percentage or by salary. The amount of percentage or salary is also left in the discretion of the County Council.

(*e*) See note *h* to sec. 189 of the Municipal Institutions Act.

(*f*) This is to enable the County Council, when dealing with the fund with a view to apportionment, to do so safely and intelligently. (See note *a* to sec. 166 of this Act.)

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What it shall show.

**169.** The said report shall contain (*g*) an account of all the moneys received and expended during the year ending on the thirty-first of December next preceding, distinguishing the sums received on account of, and paid to, the several Municipalities, and received and paid on account of interest or debentures negotiated or redeemed, and the sums invested and the balance in hand; a list of all debentures then unpaid, with the dates at which they will become due; and a statement of all the arrears then due (distinguishing those due in every Municipality); and the amount due on lands then advertised for sale, or which by law may be advertised during the ensuing year.

Copy to be transmitted to Provincial Secretary.

**170.** The Warden shall cause a copy of the report to be transmitted to the Provincial Secretary for the information of the Lieutenant Governor. (*h*)

Collection of taxes on lands of non-residents in cities provided for.

**171.** Arrears of taxes due to Cities or Towns shall be collected and managed in the same way as like arrears due to other Municipalities; (*i*) and the Chamberlain or Treasurer and Mayor shall, for these purposes, perform in the case of Cities and Towns the like duties as are hereinbefore, in the case of other Municipalities, imposed on the Treasurer and Warden.

County treasurers, &c., to keep triplicate blank receipt books.

**172.** The Treasurer of every County, and the Treasurer or Chamberlain of every City and every Town, shall be required to keep a triplicate blank receipt book, and on

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(*g*) The report must contain—

1. An account of all the moneys received and expended during the year, *distinguishing* the sums received on account of and paid to the several Municipalities, and received and paid on account of interest or debentures negotiated or redeemed, *and* the sums invested *and* the balance on hand.
2. A list of all debentures unpaid, with the dates at which they will become due.
3. A statement of all the arrears then due (distinguishing those due in every Municipality) and the amount due on lands advertised for sale, or which may be advertised during the ensuing year.

(*h*) It is not said *when* the Warden shall cause this to be done, but without doubt it is intended that he shall do so within a reasonable time after the receipt of the report.

(*i*) The power given to a City to collect taxes authorizes the sale by the City of non-resident land. (*Per* Wilson, J., in *McKay* v. *Bamberger et al*, 30 U. C. Q. B. 95, 97.) But until the passing of sec. 172 of 29 & 30 Vic. cap. 53, of which the above was a re-enactment, a City had no power to sell the land of a resident for arrears of taxes. (*Ib.*)

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receipt of any sum of money for taxes on land, shall deliver to the party making payment one of such receipts, and shall deliver to the County, City or Town Clerk the second of the set, with the corresponding number, retaining the third of the set in the book; delivery of such receipts to be made to the Clerk at least every three months; (*k*) and the County, City or Town Clerk shall fyle such receipts, and, in a book to be kept for that purpose, shall enter the name of the party making payment; the lot on which payment is made; the amount paid; the date of payment; and the number of the receipt; (*l*) and the auditors shall examine and audit such books and accounts at least once in every twelve months. (*m*)

Audit of books, &c.

*Responsibility of Officers.*

**173.** Every Treasurer, Chamberlain and collector, before entering on the duties of his office, shall enter into a bond to the Corporation of the Municipality for the faithful performance of his duties. (*a*)

Security by treasurers and collectors.

**174.** Such bond shall be given by the officer and two or more sufficient sureties, in such sum and such manner as the Council of the Municipality by any By-law shall require

Bond with sureties.

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(*k*) This is intended not merely as a check upon the person receiving the money, but for the preservation of evidence of payment; so that if one set of receipts should happen to be destroyed or mislaid, the other will be forthcoming.

(*l*) The entries required are—

1. The name of the party making payment;
2. The lot on which the payment is made;
3. The amount paid;
4. The date of the payment;
5. The number of the receipt.

(*m*) See note *h* to sec. 189 of the Municipal Institutions Act.

(*a*) Each of the officers named is by virtue of his office connected with the receipt or disbursement of moneys belonging to the Corporation. It is made the duty of each, "before entering upon the duties of his office," to enter into a bond to the Corporation of the Municipality for the faithful performance of his duties. Besides, each must, before entering on the duties of his office, make and subscribe a declaration of office. (See sec. 212 of the Mun. Ins. Act.) The appointment to the office necessarily precedes the obligation to give the bond or make the oath. So soon as the person is appointed, it becomes his duty to do the one and the other. But the omission of either does not *per se* vacate the appointment, unless conditionally made, nor render the person appointed incompetent to discharge the other duties appertaining to his office. (See *Judd* v. *Read*, 6 U. C. C. P. 362; see further, note *r* to sec. 195 of the Municipal Institutions Act.)

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in that behalf, and shall conform to all the provisions of such By-law. (*b*)

Penalty on assessors or clerks failing to perform their duty, and how enforced.

**175.** If any Treasurer, Assessor, Clerk or other officer refuses or neglects to perform any duty required of him by this Act, he shall, upon conviction thereof before any Court of competent jurisdiction in the County in which he is Treasurer, Assessor, Clerk or other officer, forfeit to Her Majesty such sum as the Court shall order and adjudge, not exceeding one hundred dollars. (*c*)

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(*b*) The bond should be made to the Corporation of the Municipality (sec. 173), and in the name of the Corporation, thus: "*The Corporation of the* (County, City, Town, Village, Township, or united Counties or united Townships, *as the case may be*) *of* (naming the same). (Sec. 4 of the Mun. Ins. Act.) But it does not follow that bonds taken in any other name or in any other form will be void. A bond by a collector and sureties to "the Treasurer of the Town of," &c., has been held good. (*Judd* v. *Read*, 6 U. C. C. P. 362; *Todd* v. *Perry et al*, 20 U. C. Q. B. 649.) So where it was to "The Municipality of the Township of Whitby" (*Whitby* v. *Harrison*, 18 U. C. Q. B. 603, 606); or, "The Provisional Municipal County Council of the County of Bruce" (*Bruce* v. *Cromar*, 22 U. C. Q. B. 321), in each case the bond was held good. (See also, *The Brock District Council* v. *Bowen*, 7 U. C. Q. B. 471; *The Trent and Frankford Road Co.* v. *Scott Marshall*, 10 U. C. C. P. 329.) The bond, when given, should have two or more *sufficient* sureties, in such sum and in such manner as the Council of the Municipality by any By-law shall require in that behalf. The members of Municipal Councils cannot, as trustees for the ratepayers, evince too much care in seeing that the receipt and expenditure of the money of the ratepayers is properly secured; and in cases of flagrant neglect it is quite possible that the members themselves might be held personally responsible. (See *Parks* v. *Davis*, 10 U. C. C. P. 229.) The bond, if in general terms for accounting and paying over all moneys collected, will apply as well to moneys collected for County purposes as for any of the purposes mentioned in sec. 190 of this Act. (See sec. 192; see further, note *r* to sec. 195 of the Municipal Institutions Act.)

(*c*) This is a wise provision, intended to secure the due execution of the Act by the officers mentioned, whose business it is to learn their duty, and to do it accordingly. Either refusal or neglect is made punishable. The former involves an act of the will, but the latter does not necessarily do so. Any inquiry into the motives or cause of neglect, so far as this section is concerned, would be inexpedient; it would be leaving too much to the lenity of a jury. But mere omission is not necessarily equivalent to neglect. Inability or superior force may excuse the non-performance of a duty by one who is willing to do it. Nor does it follow that every non-compliance with the directions of the Act, in its minor details, will bring the party within the penalty of this section. Neglect, however, may in general be described as the omission to do some duty which the party was able to do, but did not do. Forgetfulness is no excuse. The penal part of the Act may press with more severity in one class

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of cases than another; but with that the Courts have nothing to do: the law is so written, and the Courts have nothing to do with the consequences. (See *King* v. *Burnell*, 12 A. & E. 460.) "Neglect" means, in such a statute as this, the omission to do some duty which the party is able to do. (*Per* Patteson, J., *Ib.* 468.) "Where no *vis major* or inability intervenes, omitting to do what ought to be done is neglect." (*Per* Williams, J., *Ib.* 469.) "The defendant has contravened the Act without showing any lawful excuse. This is a neglect within the Act. Forgetfulness or carelessness is no such lawful excuse." (*Per* Coleridge, J., *Ib.*) The neglect may be wholly to do the duty, or to do it within the time limited in that behalf. Either is neglect within the meaning of this section. It is of the utmost importance, so far as the administration of the provisions of the Municipal and Assessment Acts is concerned, that things should be done when directed to be done. (See *Hunt* v. *Hibbs*, 5 H. & N. 123.) This section throughout, so far as neglect is concerned, applies rather to cases of mere neglect than of wilful neglect. The latter are looked upon as still more penal, and especially provided for by subsequent sections. (Sec, 177.) The words of the section are: "If *any* Treasurer, Assessor, &c., refuses or neglects," &c. So the words of the next section are: "If *an* Assessor neglects or omits to perform *his* duties, the *other* Assessor," &c. It would seem that the penalty or forfeiture is a personal one attaching to *each* person in default. (See *The King* v. *Share*, 3 Q. B. 31; see also, *Clarke* v. *Gant*, 8 Ex. 252.) Each is to be liable for such sum as the Court shall order, not exceeding one hundred dollars. A declaration treating two defendants as jointly liable for a penalty where there was a several duty and a several penalty, was held bad on demurrer. (*Metcalf q. t.* v. *Reeve et al*, 9 U. C. Q. B. 263.) In giving judgment, Sir John B. Robinson said: "They (the defendants, who were magistrates, sued for not returning a conviction) cannot commit a *joint* offence and be subject to *one* penalty, because *neither* transmitted it." (*Ib.* 264.) So where it is the duty of two assessors to return an assessment roll by a fixed day, it would seem that they should not be prosecuted jointly, but severally. (*The Queen* v. *Snider et al*, 23 U. C. C. P. 330.) It is a personal penalty for a personal default. (*Ib.*) It is said that the penalty or forfeiture is to be "upon conviction thereof before any Court of competent jurisdiction in the County." Does this mean a civil or a criminal Court? The words of sec. 176 of the 29 & 30 Vic. cap. 53, were, "Before the Recorder's Court of the City, or before the Court of General Quarter Sessions of the County." These words were omitted in the section here annotated, and more general words substituted, no doubt because of the constitutional difficulty that legislation as to criminal procedure appertains to the Dominion Legislature exclusively. (See note *v* to sec. 304 of the Municipal Institutions Act.) It is by subsection 20 of sec. 6 of the Interpretation Act of Ontario, declared that "whenever any pecuniary penalty or any forfeiture is imposed for any contravention of any Act, then if no other mode be prescribed for the recovery thereof, such penalty or forfeiture shall be recoverable with costs by civil action or proceeding at the suit of the Crown only, or of any private party suing as well for the Crown as for himself, in any form allowed in such case by the law of this Province, before any Court having jurisdiction to the amount of the penalty in cases of simple contract, upon the evidence of any

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Other assessors may act for those in default.

**176.** If an assessor neglects or omits to perform his duties, the other assessor, or other assessors (if there be more than one for the same locality), or one of such assessors, (*d*) shall, until a new appointment, perform the duties, and shall certify upon his or their assessment roll the name of the delinquent assessor, and also, if he or they know it, the cause of the delinquency; (*e*) and any Council may, after an

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one credible witness other than the plaintiff or party interested." If the forfeiture were by this Act fixed so that an action of debt could be maintained, there would be strong ground for the argument that the amount of the forfeiture under this section is recoverable by action in a Court of civil jurisdiction. But the difficulty in the way of giving full effect to such an argument arises from the fact that the forfeiture is to be "*such sum* as the *Court* shall order and adjudge, not exceeding $100." (See *Gee* v. *Wilden*, Lutw. 1320; *Wood* v. *Searl*, Bridg. 139; *Butchers' Co.* v. *Bullock*, 3 B. & P. 434; *Piper* v. *Chappell*, 14 M. & W. 624; see further, Grant on Corporations, 84; note *u* to sub. 11 of sec. 372 of the Municipal Institutions Act, and *q* to sec. 180 of this Act.) If it could be said to be "*summarily* imposed," within the meaning of sec. 202 of this Act, it might be levied and collected by distress and sale of the offender's goods under authority of a warrant issued by a Justice of the Peace. But it is held that no new offence is cognizable before a Justice of the Peace, unless the jurisdiction is expressly conferred by Act of Parliament. (See note *h* to sec. 202.) The Court of Common Pleas recently held that, in the absence of further legislation, the omission of assessors to return the roll by the day limited for the purpose is not an indictable offence. (*The Queen* v. *Snider*, 23 U. C. C. P. 330.) "Such an omission—in no way criminal in itself—cannot, we think, be treated as a misdemeanour or any species of criminal offence, unless declared to be such by competent legislative authority." (*Per* Hagarty, C. J., *Ib.* p. 336.) The Legislature of Ontario during its last session has declared, that "where a pecuniary penalty or forfeiture is imposed by any Act of the Parliament of Canada or of this Province with reference to any matter within the jurisdiction of the Legislature of Ontario, and the amount of the penalty or forfeiture is in any respect in the discretion of the Court or Judge, or in case the Court or Judge has the right to impose imprisonment in addition or in lieu of such penalty or forfeiture, and no other mode is by the Act expressly prescribed for the recovery of the penalty or forfeiture, the same may be recovered, upon indictment, in any Court of Oyer and Terminer or General Sessions of the Peace. (37 Vic. cap. 7, sec. 94.) It remains to be decided whether this enactment is one within the competence of the Legislature of Ontario. (See 31 Vic. cap. 71, sec. 3, Dom.)

(*d*) The duty is apparently a several—not a joint one. (See note *c* to sec. 175 of this Act.)

(*e*) The obligation of "the *other* assessor" or assessors, under the circumstances stated, to do what is required of him or them, is as much a duty as any duty primarily imposed on him or them under this Act.

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assessor neglects or omits to perform his duties, appoint some other person to discharge such duties; (*f*) and the assessor so appointed shall have all the powers and be entitled to all the emoluments which appertain to the office. (*g*)

Punishment of clerks, assessors, &c., making fraudulent assessments, &c

**177.** If any Clerk, Treasurer, assessor or collector, acting under this Act, makes any unjust or fraudulent assessment or collection, or copy of any assessor's or collector's roll, or wilfully and fraudulently inserts therein the name of any person who should not be entered, or fraudulently omits the name of any person who should be entered, or wilfully omits any duty required of him by this Act, (*h*) he shall,

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(*f*) The power to appoint involves the power to remove, and neglect or omission to perform specified duties is a just cause of removal. (See note *r* to sec. 184 of the Municipal Institutions Act and notes thereto.)

(*g*) See note *c* to sec. 147 of this Act.

(*h*) Cases of refusal or mere neglect are provided for by sec. 175. This section is intended for the punishment of misconduct still more reprehensible than any provided against in that section. The acts of misconduct specified are:

1. Making any unjust or fraudulent assessment or collection, or copy of any assessor's or collector's roll. (See sec. 178 of this Act.)
2. Wilfully *and* fraudulently inserting therein the name of any person who should not be entered, *or* fraudulently omitting the name of any person who should be entered.
3. Wilfully omitting *any* duty required by this Act. (See note *c* to sec. 175 of this Act.)

In Bac. Abr. "Offices and Officers," 181, it is said that "if an officer acts contrary to the nature and duty of his office, or if he refuses to act at all in these cases, the office is forfeited." In *Philips* v. *Bury*, 1 Ld. Rayd. 5, it was held that contumacy is a good ground for the deposition of an officer. In *The King* v. *Wells*, 4 Burr. 1999, 2004, Lord Mansfield said: "A *general* neglect or *refusal* to attend the duty of such an office is a reason of forfeiture; so a *determined* neglect, a *wilful* refusal." By sec. 6 of 1 W. & M. cap. 21, it is declared that "if any Clerk of the Peace shall misdemean himself in the execution of the said office, and thereupon a complaint and charge, in writing, of such misdemeanor shall be exhibited against him to the Justices of the Peace in their General Quarter Sessions, it shall be lawful for the said Justices, or the major part of them, from time to time, upon examination and due proof thereof, openly, in their said General Quarter Sessions, to suspend or discharge him from the said office." In *Wildes* v. *Russell*, L. R. 1 C. P. 722, 737, Willes, J., said: "The law upon the subject of forfeiture of an office is to be found in Com. Dig. 'Officer, K,' where it is laid down that an officer forfeits his whole office by non-user or abuser of the office by him or his deputy. In some such sense as this, and not merely in a criminal sense, is the word misdemeanor used in this section (sec. 6 of 1 W. & M. cap. 21), and there can be no doubt, therefore, that an absolute and persistent

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upon conviction thereof before a Court of competent jurisdiction, (*i*) be liable to a fine not exceeding two hundred dollars, and to imprisonment until the fine be paid, or to imprisonment in the common gaol of the County or City, for a period not exceeding six months, or to both such fine and imprisonment, in the discretion of the Court. (*k*)

What shall be evidence of fraudulent assessment.

**178.** Proof, to the satisfaction of the jury, that any real property was assessed by the assessor at an actual value greater or less than its true actual value, by thirty per centum thereof, shall be *prima facie* evidence that the assessment was unjust or fraudulent. (*l*)

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refusal by the Clerk of the Peace to enter an order of Sessions is a misdemeanor in his office. I entirely agree with Mr. Chambers that a mere delay in acting upon such an order, or even a strong remonstrance against it by the Clerk of the Peace, would not amount to a misdemeanor so as to work a forfeiture of the office." By the Dominion Act 31 Vic. cap. 71, sec. 3, "Any wilful contravention of any Act of the Legislature of any of the Provinces within Canada, which is not made an offence of some other kind, shall be a misdemeanor, and punishable accordingly." (See *The Queen* v. *Snider et al*, 23 U. C. C. P. 330, 336.)

(*i*) *Competent jurisdiction.* See note *c* to sec. 175.

(*k*) The punishment under this section may be—

1. Fine not exceeding $200, *and* to imprisonment till the fine be paid.
2. Imprisonment in the common gaol for a period not exceeding six months.
3. *Both* such fine and imprisonment, in the discretion of the Court.

(See *In re Slater* v. *Wells*, 9 U. C. L. J. 21.)

(*l*) The true actual value of real property is, in general, mere matter of opinion; and where the subject of inquiry is a mere matter of opinion, opinions of men will be found widely to differ. One man is sanguine, and fixes present value in hope of future increase; another is gloomy, and is influenced by fears of future decrease. One values for purposes of sale, being able and willing to buy; another values with the like view, being neither able nor willing to buy. Each man has his own stand-point, and his opinion is greatly influenced thereby. (See note *v* to sec. 30 of this Act.) That the price paid for land, and the money expended upon it, do not constitute its value, is a matter of every-day experience. The value rather depends upon the number of persons who at the moment are willing to purchase, coupled with the unwillingness of the owners to sell, and in a less degree by the amount of capital held for investment in land at the time. The anxiety of the owner to sell, when few are willing to buy, frequently reduces it to a value more nominal than real. Strictly speaking, the value of land, like any other commodity, is the price it will bring in the market at the time it is offered for sale. (See *Squire qui tam* v. *Wilson*, 15 U. C. C. P. 284.) But before any man can be convicted under this section, the jury

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Punishment of culpable assessors.

**179.** An assessor convicted of having made any unjust or fraudulent assessment, (*m*) shall be sentenced to the greatest punishment, both to fine and imprisonment, allowed by this Act. (*n*)

Penalty for not making and completing assessment rolls by the proper time.

**180.** With reference to the Upper Canada Jurors' Act, if an assessor of any Township, Village or Ward neglects or omits (*o*) to make out and complete his assessment roll for the Township, Village or Ward, and to return the same to the Clerk of such Township or Village, or of the City or Town in which such Ward is situated, or to the proper officer or place of deposit of such roll, on or before the first day of September of the year for which he is assessor, (*p*) every such assessor so offending shall forfeit for every such offence the sum of two hundred dollars, one moiety thereof to the use of the Municipality, and the other moiety, with costs, to such person as may sue for the same in any Court of competent jurisdiction by action of debt or information; (*q*) but nothing herein contained shall be construed to relieve any assessor from the obligation of returning his

Not to impair any other liability.

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must be satisfied of the actual value of the property in question; and when it has been arrived at, a valuation greater or less than it by thirty per cent. is made *prima facie* evidence that the assessment was unjust or fraudulent. But it is still in the power of the accused, by proof of the circumstances under which the assessment was made, to rebut the *prima facie* case so established. (See *Churcher* v. *Cousins*, 28 U. C. Q. B. 540.)

(*m*) See note *l* to sec. 178 of this Act.

(*n*) See note (*k*) to sec. 177 of this Act.

(*o*) *Neglects* or *omits*. See note *c* to sec. 175 of this Act.

(*p*) See note *h* to sec. 189 of the Municipal Institutions Act.

(*q*) The County Court has now jurisdiction in penal actions. (*Brash q. t.* v. *Taggart*, 16 U. C. C. P. 415.) The statute 18 Eliz. cap. 5, prohibits the compromise of such actions without the leave of the Court (*Bleeker* v. *Meyers*, 6 U. C. Q. B. 134), and in one case leave was given on paying the Crown's share into Court. (*Gray* v. *Dettrick*, H. T. 6 Wm. IV.; R. & H. Dig., Penal Action, 2.) Where it clearly appears on the face of the declaration, that the consideration of the defendant's promise was a compromise of such an action without leave of the Court, brought by the plaintiff as a common informer against defendant, the consideration will be held to be illegal, and the declaration bad. (*Hart* v. *Meyers*, 7 U. C. Q. B. 416.) The verdict of a jury for defendant, in a penal action, on a question of fact properly left to them, is final and conclusive. (See *Hall* v. *Green*, 9 Ex. 247; *Gough* v. *Hardman*, 6 Jur. N. S. 402; *McLellan qui tam* v. *Brown*, 12 U. C. C. P. 542; *Squire qui tam* v. *Wilson*, 15 U. C. C. P. 284.) No damages are recoverable for the detention of the debt, because the debt is not due till judgment. (See *Frederick* v. *Lookup*, 4 Burr. 2018; *Cuming* v. *Sibly*, *Ib.* 2489.)

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assessment roll at the period required elsewhere by this Act, and from the penalties incurred by him by not returning the same accordingly. (*r*)

Proceedings for compelling collectors to pay over moneys collected to the proper treasurer.

**181.** If a collector refuses or neglects (*s*) to pay to the proper Treasurer or Chamberlain, or other person legally authorized to receive the same, the sums contained in his roll, or duly to account for the same as uncollected, (*t*) the Treasurer or Chamberlain shall, within twenty days after the time when the payment ought to have been made, (*u*)

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(*r*) See note *h* to sec. 189 of the Municipal Institutions Act.

(*s*) *Neglects or refuses.* See note *c* to sec. 175 of this Act.

(*t*) It is the duty of every collector of taxes, on or before the 14th of December in every year, or on such other day in the next year, not later than the 1st of February, as the Council of the City, Town, Township or Village may appoint, to return his roll to the Treasurer or Chamberlain of the Municipality, and pay over the amount payable to such Treasurer or Chamberlain, specifying in a separate column in his roll how much of the whole amount paid over is on account of such separate rate. (Sec. 103.) If any of the taxes mentioned in the collector's roll remain unpaid, and the collector be not able to collect the same, he must deliver to the Chamberlain or Treasurer of the Municipality an account of all taxes remaining due on the roll, and in such account must show opposite to each assessment the reason why he could not collect the same, by inserting in each case the words "non-resident" or "not sufficient property to distrain" (as the case may be.) (Sec. 105.)

(*u*) *i. e.* "*Within* twenty days *after the time* when the payment *ought to be made.*" These words are the same as used in the correspondent sections 177 of Con. Stat. U. C. cap. 55, and sec. 182 of 29 & 30 Vic. cap. 55. The time within which the warrant must, under the section, be issued, is involved in considerable doubt. In *Charlesworth* v. *Ward*, 31 U. C. Q. B. 94, the only case in which the question has arisen, the only two Judges who expressed opinions on the point very materially differed in their views. The collector, in that case, was appointed for the years 1864 and 1865. In January, 1865, he was authorized to continue the collection of the taxes for 1864 until 1st May, 1865, and in January, 1866, was authorized to continue "so long as he should be recognized by the Municipality of the said Township." He did not return the rolls until April, 1867. A large sum for each of the years 1865 and 1866 appeared to be unaccounted for. On 2nd April, the Township Treasurer, under a resolution of the Council, demanded payment, and on 6th of same month issued his warrant. The question raised was as to the validity of the warrant. Chief Justice Richards, in delivering judgment, said: "The cases referred to by Mr. Harrison decide that the collector, while he retained the roll, had power to collect the taxes unpaid that were to be levied under it after the time mentioned in the statute (14th December) for the return of the roll, when the time had not been enlarged by the Council of the Municipality when the distress of the taxes was made. The effect of the decisions seems to be that as long as the collector retained the roll,

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issue a warrant under his hand and seal, directed to the Sheriff of the County or City (as the case may be) commanding him to levy of the goods, chattels, lands and tenements of the collector and his sureties, such sum as remains unpaid and unaccounted for, with costs, and to pay to the Treasurer or Chamberlain the sum so unaccounted for, and to return the warrant within forty days after the date thereof.

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and was an officer of the Municipality, he might collect the taxes mentioned in it, and having collected the taxes he and his sureties were liable on their bond for not paying them over. The question here is whether the warrant authorized by the 182nd section of the statute 29 & 30 Vic. and C. S. S. U. C. cap. 55, sec. 177, can be issued at any time when *more* than twenty days have passed after the collector was *bound* to return his roll . . . to wit, the 14th December, or the 1st April or May of the year for which the taxes were to be collected, or in the following year as to the last mentioned days. The section speaks of the collector refusing or neglecting to pay to the proper Treasurer, or other person legally authorized to receive the same, the sums contained on his roll, or duly to account for the same as uncollected. Then the Treasurer or Chamberlain shall, '*within twenty days after the time* when the payment ought to have been made, issue a warrant to levy such sum as remains unpaid and unaccounted for.' What is the *time* when the payment ought to have been made to enable the Municipality to exercise the large and unusual powers conferred on them by the section referred to? The only *time* mentioned in the statute then in force was the 14th day of December, or such other day as the Municipal Council of the County may appoint, not later than the 1st day of May in the next year. Now, here no other day than the 14th of December was appointed for the return of the rolls or the paying over of the money, and the power to issue the warrant was not exercised within twenty days of that time. . . Another question to be considered is, what do the words 'within twenty days after the time when the payment ought to have been made,' mean? Are they to be interpreted *literally?* or is the true meaning that the warrant is not to issue until *the expiration* of the twenty days from the time? . . . I think the safest rule to lay down, and the one more in accordance with the true meaning of the statute, and the general doctrine as to the view taken of extraordinary and unusual remedies given to enforce the collection of money, is to hold the parties to the *strict letter* of the law on the subject." (*Ib.* 101, 102, 103, 104.) Mr. Justice Wilson held a contrary view. He said: "It is provided by 29 & 30 Vic. cap. 53, sec. 182, that if a collector refuses or neglects to pay the proper Treasurer the sums contained in his roll, the Treasurer shall, 'within twenty days after the time the payment ought to have been made,' issue a warrant. Here, no precise day being fixed for paying over the collections, a demand was required to be made on him to pay over before he could be considered as in default. The demand on the 2nd of April fixed the time for payment. For the first time properly under the two rolls the collector made default in payment, according to the extended



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Warrant to be delivered to sheriff, &c.

**182.** The said Treasurer or Chamberlain shall immediately deliver (*v*) the said warrant to the Sheriff of the County or City, as the case may require.

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time. On the 6th April, 1867, the warrant to sell the goods and lands of the collector and his sureties, for defalcations under both rolls, issued and was delivered to the Sheriff. The statute says: 'The Treasurer shall, within twenty days after the time when the payment ought to have been made, issue a warrant.' It issued *within twenty days* after the demand on the 2nd of April. Is that the time when the payment ought to have been made? I think the party would be entitled to a reasonable time after the demand within which to pay. Perhaps three days would be a reasonable time. If so, the warrant on the 6th of April, 1867, is all right, if the warrant is not to be issued *not later* than twenty days from the time of default. But does the statute mean that the warrant is to issue only within the twenty days? If so, this warrant may issue on the very day after the payment should have been made, and cannot issue after these twenty days have expired. Or does it mean that the warrant shall *not* be issued for twenty days after the default made? In *The King* v. *Ireland*, 3 T. R. 512, the words on which the question arose were as follows: 'That the prosecutor, for the recovery of such costs *within ten days* after demand made of the defendant and refusal of payment, have an attachment granted against the defendant.' *Only* eight days had elapsed since the demand. The Court said: 'Though the words of the statute were, "*within* ten days," they had always been understood to mean that ten days must elapse before the attachment could be granted; otherwise, instead of the indulgence of the ten days supposed to be offered by the Legislature, the party would be liable to an attachment *immediately* after a demand and refusal.' And they refused the motion for the attachment. . . . I am of opinion the collector had until the 2nd April, 1867, within which to pay the demand, on that day determining his right to any further day; and, upon the authorities, the warrant by execution which issued on the 6th of April, having issued *before* the twenty days after default to pay had elapsed, was improperly, because prematurely, issued." (*Ib.* 108, 109, 110.) The extraordinary feature of the case is, that one learned Judge held the warrant bad because issued *too late*, and the other because issued *too soon*. Morrison, J., who during the argument referred to *O'Meara* v. *Foley*, Ir. L. R. 4 C. L. 116, concurred in opinion with Wilson, J. The result was that the warrant was held by the Court to be void, because issued *too soon*. The warrant must be under the *hand* and *seal* of the Treasurer. (See note *i* to sec. 128 of this Act.)

(*v*) "*Immediately deliver*," &c. It is of the greatest importance that moneys due to a Municipal Corporation for taxes or rates should with as little delay as possible be paid. This is necessary in order to enable the Corporation not merely to pay its officers and keep faith with contractors, but to keep faith with public creditors. Hence it is that sureties are necessary (secs. 175, 176), and hence it is that so stringent provisions, even of a criminal nature, are enacted against collectors and others whose duty it is to collect and pay over taxes. (Sec. 181.) Hence it is that the very summary remedy of a civil nature is provided by the preceding section, and that remedy

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**183.** The Sheriff to whom the warrant is directed shall, within forty days, cause the same to be executed, and make return thereof to the Treasurer or Chamberlain, and shall pay to him the money levied by virtue thereof, (*w*) deducting for his fees the same compensation as upon writs of execution issued out of Courts of Record. (*x*) Sheriff, &c., to execute it, and pay money levied.

**184.** If a Sheriff refuses or neglects to levy any money when so commanded, or to pay over the same, or makes a false return to the warrant, or neglects or refuses to make any return, or makes an insufficient return, (*a*) the Treasurer or Chamberlain may, upon affidavit of the facts, (*b*) apply in a summary manner, to either of the Superior Courts of Common Law in term time, or to any Judges (*c*) of either Court in vacation, for a rule or summons calling on the Sheriff to answer the matter of the affidavit. Mode of compelling sheriff, &c., to pay over

**185.** The said rule or summons shall be returnable at such time as the Court or Judge directs. (*cc*) When returnable.

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is an immediate one, not only against the goods, chattels, lands and tenements of the collector, *but of his sureties*. (See notes to sec. 181, and note *w* to sec. 183 of this Act.)

(*w*) The duties of the officers to whom the writ is delivered are:

1. To cause the same to be executed.
2. To make return thereof to the Treasurer or Chamberlain.
3. To pay over the money levied—deducting his fees.

All apparently *within* forty days.

(*x*) A Sheriff is not entitled to poundage on a writ of execution, unless he actually levy, that is, make the money. (*Buchanan et al* v. *Frank*, 15 U. C. C. P. 196.) If the claim be settled by means of the pressure of the writ, the Sheriff is entitled to reasonable compensation therefor. (*Ib.*)

(*a*) The section applies if the Sheriff *refuses* or *neglects* (see note *c* to sec. 175 of this Act)—

1. To levy.
2. To pay over the amount, if levied.
3. To make any return.
4. *Or* makes a false or insufficient return.

(*b*) The application is to be made "upon affidavit of the facts." If the affidavit be deemed sufficient, the Court or Judge will grant a rule or summons, returnable at such time as may be directed, to answer the matter of the affidavit. (See sec. 185.)

(*c*) *Judges—qu.* "Judge." (See note *c* to sec. 185.)

(*cc*) It is to be observed that the application may be made to either of the Superior Courts of Common Law in term, or to any *Judges* (*qu.* Judge) of either Court in vacation. (See sec. 184.) If to the Court, a rule is obtained; if to a Judge, a summons. Either is, under this section, to "be returnable at such time as the Court or *Judge* directs." "Court or *a Judge*" is the expression used in secs. 186, 187.

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Hearing on return.

**186.** Upon the return of such rule or summons, (*d*) the Court or a Judge may proceed in a summary manner upon affidavit, and without formal pleading, to hear and determine the matters of the application. (*e*)

*Fi. fa.* to the coroner to levy the money.

**187.** If the Court or Judge (*f*) be of opinion that the Sheriff has been guilty of the dereliction alleged against him, (*g*) such Court or Judge shall order the proper officer of the Court to issue a writ of *fieri facias*, (*h*) adapted to the case, directed to a coroner of the County in which the Municipality is situate, or to a coroner of the City or Town (as the case may be) for which the collector is in default. (*i*)

Tenor of such writ.

**188.** Such writ shall direct the Coroner to levy of the goods and chattels of the Sheriff the sum which the Sheriff was ordered to levy by the warrant of the Treasurer or Chamberlain, together with the costs of the application, and of such writ and of its execution; (*k*) and the writ shall bear date on the day of its issue, whether in term or vacation, and shall be returnable forthwith upon its being executed; (*l*) and the Coroner, upon executing the same, shall be entitled to the same fees as upon a writ grounded upon a judgment of the Court. (*m*)

Execution thereof.

Fees.

Penalty on sheriff, if no other imposed.

**189.** If a Sheriff wilfully omits (*n*) to perform any duty required of him by this Act, and no other penalty is hereby

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(*d*) See note *c* to sec. 185.

(*e*) It is enacted that the Court or a Judge may proceed in a summary manner *to hear and determine* the matters of the application. (See sec. 69 of this Act, and notes thereto.) Apparently as much power is given to the Judge as the Court. The jurisdiction of each is to hear and determine; and it may be contended that when a Judge determines, though in a matter entitled in the Court, his decision is final. The jurisdiction is a statutable one, and in the absence of a provision for an appeal from the decision of the Judge or the Court, it may be argued there is no appeal. The point is as yet undecided under this statute. (See *In re Allen*, 31 U. C. Q. B. 458, under corresponding words in Con. Stat. U. C. cap. 74, sec. 1.)

(*f*) See note *cc* to sec. 185 of this Act.

(*g*) See note *a* to sec. 184 of this Act.

(*h*) This writ is against the Sheriff's own proper goods and chattels. (See sec. 188.)

(*i*) A writ of execution directed to no one is a nullity. (*Wood et al* v. *Campbell*, 3 U. C. Q. B. 269.)

(*k*) See note *i* to sec. 187 of this Act.

(*l*) See note *v* to sec. 182 of this Act.

(*m*) See note *x* to sec. 183 of this Act.

(*n*) *Wilfully omits.* See note *h* to sec. 177 of this Act.

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imposed for the omission, he shall be liable to a penalty of two hundred dollars, to be recovered from him in any Court of competent jurisdiction, at the suit of the Treasurer of the County or Town or Chamberlain of the City. (*o*)

Payment of money collected for the Province.

**190.** All money assessed, levied and collected for the purpose of being paid to the Receiver-General of the Province of Canada or to the Treasurer of the Province, or to any other public officer, for the public uses of the Province, or for any special purpose or use mentioned in the Act under which the same is raised, shall be assessed, levied and collected by, and accounted for and paid over to the same persons and in the same manner and at the same time as taxes imposed on the same property for County or City purposes, and shall, in law and equity, be deemed and taken to be moneys collected for the County, Town or City, so far as to charge every collector, Chamberlain or Treasurer with the same, and to render him and his sureties responsible therefor, and for every default or neglect in regard to the same, in like manner as in the case of moneys assessed, levied and collected for the use of the City, Town or County. (*p*)

How money collected for county purposes shall be paid over.

**191.** All moneys collected for County purposes, or for any of the purposes mentioned in the preceding section, shall be payable by the collector to the Township, Town or

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(*o*) See note *q* to sec. 180 of this Act.

(*p*) This is a very comprehensive and important section, but in language a good deal involved. The declaration is, that

*All money* assessed, levied and collected for the purpose of being paid—

1. To the Receiver-General of the Province of Canada,
2. To the Treasurer of the Province,
3. Or to any other public officer,

} For the public uses of the Province, or for any special purpose or use mentioned in the Act under which the same is raised,

*Shall be*—

1. Assessed,
2. Levied,
3. Collected by,
4. And accounted for and paid over,

} To the same persons and in the same manner and at the same time as taxes imposed on the same property for County and City purposes,

And *shall be*—

Deemed and taken to be moneys collected for the County, Town or City, *so far* as to charge every collector, Chamberlain or Treasurer with the same, and to render him and his sureties responsible therefor, and for every default or neglect in regard to the same, &c. (See note *a* to sec. 197 of this Act.)

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Village Treasurer, and by him to the County Treasurer, and the Corporation of the Township, Town or Village shall be responsible therefor to the Corporation of the County. (*q*)

Collectors or treasurers bound to account for all moneys collected by them.

**192.** Any bond and security given by the Collector or Treasurer to the Corporation of the Township, Town or Village, that he will account for and pay over all moneys collected or received by him, shall apply to all moneys collected or received for County purposes, or for any of the purposes mentioned in the one hundred and ninety-first section. (*r*)

Local treasurer to pay over county moneys to county treasurers.

**193.** The Treasurer of every Township, Town or Village shall, within fourteen days after the time appointed for the final settlement of the collector's rolls, (*s*) pay over to the Treasurer of the County all moneys which were assessed and by law required to be levied and collected in the Municipality for County purposes, or for any of the purposes mentioned in the one hundred and ninety-first section of this Act. (*t*)

Mode of enforcing such payment.

**194.** If default be made in such payment, (*u*) the County Treasurer may retain or stop a like amount out of any

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(*q*) The declaration here is, that *all moneys* collected—

1. For *County purposes*,
2. Or for *any* of the purposes mentioned in the preceding section,

*Shall be*—

1. Payable by the collector to the Township, Town or Village Treasurer,
2. *And* by him to the County Treasurer,

*And that*—

The Corporation of the Township, Town or Village *shall* be responsible therefor to the Corporation of the County (not saying: "or *other* person or persons entitled thereto"). (See sec. 197.)

(*r*) It is not every bond or security given by a Collector or Treasurer that will come under this section, but only such as are conditioned or provided for accounting and paying over all moneys collected or received by the officers. These general words, when used, are, by the operation of this section, made to extend not only to moneys collected or received for County purposes, but for any of the purposes mentioned in sec. 190 of the Act. (See further, note *b* to sec. 198 of this Act.)

(*s*) See note *u* to sec. 181 of this Act.

(*t*) If default be made, summary proceedings may be had against the Treasurer, such as authorized by the Act against the collector. (Sec. 194.)

(*u*) See sec. 193.

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moneys which would otherwise be payable by him to the Municipality; or may recover the same by a suit or action for debt against such Municipality; or whenever the same has been in arrear for the space of three months, he may, by warrant under his hand and seal, reciting the facts, direct the Sheriff of the County to levy and collect the amount so due, with interest and costs, from the Municipality in default. (*v*)

Warrant to sheriff.

**195.** The Sheriff, upon receipt of the warrant, shall levy and collect the amount, with his own fees and costs, as if the warrant had been a writ of execution issued by a Court of Law; and he shall levy the amount of costs and fees in the same manner as is provided by the "Act respecting the Municipal Institutions of Upper Canada," in cases of writs of execution. (*w*)

How the sheriff shall levy.

**196.** The County Treasurer and City Chamberlain, respectively, shall be accountable and responsible to the Crown for all moneys collected for any of the purposes mentioned in the one hundred and ninety-first section of this Act, and shall pay over such moneys to the Treasurer of the Province. (*x*)

Treasurer, &c. to account for and pay over Crown moneys.

**197.** Every County, City and Town shall be responsible to Her Majesty, and to all other parties interested, that all moneys coming into the hands of the Treasurer or Chamberlain of the County, City or Town, in virtue of his office, shall be by him duly paid over and accounted for according to law. (*a*)

Municipality responsible for such moneys.

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(*v*) The remedies are—

1. Retaining or stopping a like amount out of any moneys which would otherwise be payable to the Municipality.
2. Recovering the same by a suit or action for debt against such Municipality.
3. Issue of a warrant whenever in arrears for the space of three months.

There is no limitation as to the time within which the warrant may, can or should be issued, and so the difficulty pointed out in note *u* has, as to this warrant, been avoided.

(*w*) See sec. 324 of the Municipal Institutions Act, and notes thereto.

(*x*) The liability of the collector, as declared in sec. 190, is here extended to the County Treasurer or City Chamberlain, so as to make the collection of rates, or rather the paying over the money collected, as safe and expeditious as possible. (See note *a* to sec. 197.)

(*a*) The Non-Resident Land Fund is money which may be said to come into the hands of the Treasurer within the meaning of this

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Treasurer, &c. responsible to county, &c.

**198.** The Treasurer or Chamberlain and his sureties shall be responsible and accountable for such moneys in like manner to the County, City or Town; and any bond or security given by them for the duly accounting for and paying over moneys coming into his hands, belonging to the County, City or Town, shall be taken to apply to all such moneys as are mentioned in the one hundred and ninetieth section, and may be enforced against the Treasurer or Chamberlain, or his sureties, in case of default on his part. (*b*)

Bonds to apply.

Bonds to apply to school moneys, &c.

**199.** The bond of the Treasurer or Chamberlain and his sureties shall apply to school moneys, and all public moneys of the Province; (*c*) and in case of any default, Her Majesty may enforce the responsibility of the County, City or Town by stopping a like amount out of any public money which would otherwise be payable to the County, City or Town, or to the Treasurer or Chamberlain thereof, or by suit or action against the Corporation. (*d*)

City, &c. responsible for default of chamberlain, &c.

**200.** Any person aggrieved by the default of the Chamberlain or Treasurer may recover from the Corporation of the City, County or Town, the amount due or payable to such person, as money had and received to his use. (*e*)

MISCELLANEOUS.

Penalty for tearing down notices, &c.

**201.** If any person wilfully tears down, injures or defaces any advertisement, notice or other document, which is required by this Act to be posted up in a public place for the information of persons interested, (*f*) he shall, on con-

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section, so as to make the Corporation of the County responsible for the due payment and accounting of the same. (See *Robertson* v. *Wellington*, 27 U. C. Q. B. 336.)

(*b*) In an action by the Corporation of a County against their Treasurer, on his bond, where it was proved that Government money charged by him as paid over to the Government was not so paid, it was held unnecessary to show a demand of the Government upon him for the money in order to entitle the Corporation to recover. (*Essex* v. *Park*, 11 U. C. C. P. 473.)

(*c*) See note *b* to sec. 198 of this Act.

(*d*) See note *v* to sec. 194 of this Act.

(*e*) See note *a* to sec. 197.

(*f*) It is only when the person charged is proved *wilfully* to have torn down, injured or defaced an advertisement, notice or other document, under the Act, that he can be convicted. Where the act charged can be said to have been the result of mere neglect (see note *c* to sec. 175 of this Act), and not of the will, there is no offence under this section.

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viction thereof in a summary way before any Justice of the Peace having jurisdiction in the County, City or Town, be liable to a fine of twenty dollars, and in default of payment, or for want of sufficient distress, to imprisonment not exceeding twenty days. (*g*)

Recovery of fines and forfeitures hereby imposed.

**202.** The fines and forfeitures authorized to be summarily imposed by this Act, (*h*) shall, when not otherwise provided, be levied and collected by distress and sale of the offender's goods and chattels, under authority of a warrant of distress, to be issued by a Justice of the Peace of the County, City or Town; and, in default of sufficient distress, the offender shall be committed to the common gaol of the County, and be there kept at hard labour for a period not exceeding one month. (*i*)

Application of penalties.

**203.** When not otherwise provided, all penalties recovered under this Act shall be paid to the Treasurer or Chamberlain, to the use of the Municipality. (*k*)

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(*g*) Direct imprisonment as a punishment under this section would be illegal. The only punishment authorized is a fine, to be collected by distress, and, failing distress, imprisonment not exceeding twenty days. (See note *h* to sec. 202 of this Act.)

(*h*) The authority of a Justice of the Peace summarily to try a new offence must be conferred by some statute. (*Agard* v. *Candish*, Saville, 134.) The authority, when so conferred, is not to be enlarged by inference (*Ex parte Martin*, 6 B. & C. 80), not even in the case of an obvious omission. (*Underhill* v. *Longridge*, 29 L. J. M. C. 65; see also, *Re Wainwright*, 12 L. J. Chan. 426; s. c. 1 Phil. 261.) Thus an authority summarily to settle disputes between masters and servants is not, in the absence of express legislation, to be extended to the settlement of disputes between masters and household servants. (See *The King* v. *Hulcott*, 6 T. R. 583; *Branwell* v. *Penneck*, 7 B. & C. 536; *Hardy* v. *Ryle*, 9 B. & C. 603; *Lancaster* v. *Greaves*, *Ib.* 628; *Ex parte Johnson*, 7 Dowl. 702; *Kitchen* v. *Shaw*, 6 A. & E. 729; see further, note *c* to sec. 175 of this Act.

(*i*) Where a fine or pecuniary forfeiture is imposed, the object to be attained is the collection of the money. If that object can be attained by distress of goods and chattels, it would be unlawful to imprison. The imprisonment is only authorized in default of sufficient distress, and then for a period not exceeding one month at hard labour. (See *In re Slater and Wells*, 9 U. C. L. J. 21.)

(*k*) This section also applies to all penalties (*qu.* to all fines and forfeitures) recovered under the Act. All such, when not otherwise provided, must be paid to the Treasurer or Chamberlain, to the use of the Municipality. The fine authorized by sec. 175 to be imposed on an assessor or Clerk who refuses or neglects to perform any duty under the Act, is to be forfeited "to Her Majesty." (See further, note *m* to sec. 319 of the Municipal Institutions Act.)

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REPEALING CLAUSE.

Chap. 55, Con. Stat. U. C. and Acts amending it, repealed.

**204.** The Assessment Act of Upper Canada hereby repealed, and all other Acts inconsistent with this Act are hereby repealed, (*l*) saving any rights, proceedings or things legally had, acquired or done under such Acts or any of them, and all things begun but not completed thereunder may be continued to completion as validly and with the same effect as if this Act had not been passed; (*m*) and all bonds and covenants made to any Municipal Corporation shall be as valid and binding as if made or given under this Act.

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## SCHEDULE A.

*Form of Notice by non-resident owner of land, requiring to be assessed therefor:—*

To the Clerk of the Municipality of

Take notice, that I (*or* we) own the land hereunder mentioned, and require to be assessed, and have my name (*or* our names) entered on the Assessment Roll of the Municipality of (*or Ward of the Municipality of* ) therefor.

That my (*or* our) full name (*or* names), place of residence, and post office address, are as follows:

A. B., of the Township of York, shoemaker, Weston Post Office (*as the case may be*). Description of land (*here give such description as will readily lead to identification of the land*).

Dated the day of 18

C. D.

Witness, G. H.

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(*l*) See notes *c* and *d* to sec. 515 of the Municipal Institutions Act.

(*m*) There is not only a saving of all rights, proceedings or things *legally* had, acquired or done under the repealed Acts or any of them, but an express declaration that "all things *begun* but not completed thereunder may be *continued* to completion as validly and with the same effect as if this Act had not been passed." The necessity for some such provision as last mentioned was found to exist in *Bryant* v. *Hill*, 23 U. C. Q. B. 96, and *McDonald* v. *McDonell*, 24 U. C. Q. B. 424. Its interpretation was under consideration in *Charlesworth* v. *Ward*, 31 U. C. Q. B. 94, 100, and *Edinburgh Life Assurance Co.* v. *Ferguson*, 32 U. C. Q. B. 253, 269.

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## SCHEDULE B.

TOWNSHIP OF

| NAMES AND DESCRIPTION OF PERSONS ASSESSED. | | | | | DESCRIPTION AND VALUE OF REAL PROPERTY. | | | | | | PERSONAL PROPERTY AND INCOME. | | | Aggregate value of all property. | Statute Labour | Dogs. | STATISTICS. | | | | | Date of delivery of notice, under section 48. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 |
| No. on roll. | Name of occupant or other taxable party. | Occupation. | Freeholder, householder, or tenant. | Age of occupant. | Name and address of owner when person named in column two is not the owner. Non-resident. | School section. | Concession, street, square or other designation. | No. of lot, house, &c. | No. of acres, feet, &c. | No. of acres cleared in townships, vacant or built on, or in cities, towns and villages. | Value of each parcel of real property. | Total value of real property. | Value of personal property other than income. | Taxable income. | Total value of personal property and taxable income. | Total value of real and personal property and taxable income. | Persons from 21 to 60 years old. No of days' labour. | Dogs. Bitches. | No of persons in family of person rated as resident. | Religion. | No. of cattle. | No. of sheep. | No. of hogs. | No. of horses. | |
| | | | | | | | | | | | | | | | | | | | | | | | | | |

Take notice, that you are assessed, as above specified, for the year 18 , under the statutes. If you deem yourself overcharged, or otherwise improperly assessed, you or your agent may notify the Clerk of the Municipality, in writing, of such overcharge or improper assessment, within fourteen days after the time fixed for the return of the roll, (37 Vic. cap. 19, sec. 20,) and your complaint shall be tried, in conformity with the provisions of the statutes, by the Court of Revision for the Municipality of

(ENDORSED.)

SIR, 18 .

Take notice, that I intend to appeal against this assessment, for the following reasons:

I am, Sir, your obedient servant,





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## SCHEDULE C.

*To all to whom these Presents shall come.*

We, of the of Esquire, Warden and of the of Esquire, Treasurer of the County of send greeting:—

WHEREAS by virtue of a warrant under the hand of the Warden and seal of the said County, bearing date the day of in the year of our Lord one thousand eight hundred and commanding the Treasurer of the said County to levy upon the land hereinafter mentioned, for the arrears of taxes due thereon, with his costs, the Treasurer of the said County did on the day of in the year of our Lord one thousand eight hundred and sell by public auction to of the of in the County of that certain parcel or tract of land and premises hereinafter mentioned, at and for the price or sum of of lawful money of Canada, on account of the arrears of taxes alleged to be due thereon up to the day of in the year of our Lord one thousand eight hundred and together with costs:

Now know ye that we, the said and as Warden and Treasurer of the said County, in pursuance of such sale, and the Assessment Act of 1869, and for the consideration aforesaid, do hereby grant, bargain and sell unto the said his heirs and assigns, all that certain parcel or tract of land and premises containing being composed of (*describe the land so that the same may be readily identified*).

In witness whereof, we, the said Warden and Treasurer of the said County, have hereunto set our hands and affixed the seal of the said County this day of in the year of our Lord one thousand eight hundred and and the Clerk of the County Council hath countersigned.

A. B., Warden.
C. D., Treasurer. [Corporate Seal.]

Countersigned,
E. F., Clerk.

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## SCHEDULE D.

*Form of Declaration by party complaining in person of overcharge on personal property:—*

I, A. B. (*set out name in full, with place of residence, business, trade, profession or calling*), do solemnly declare that the true value of all the personal property assessable against me (*or as the case may be*), as trustee, guardian or executor, &c., without deducting any debts due by me in respect thereof, is (*In case debts are owed in respect of such property*)—that I am indebted on account of such personal property in the sum of and that the true amount for which I am liable to be rated and assessed in respect of personal property other than income is

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## SCHEDULE E.

*Form of Declaration of party complaining in person of overcharge on account of taxable income:—*

I, A. B. (*set out name in full, with place of residence, business, trade, profession or calling*), do solemnly declare that my gross income, derived from all sources, not exempt by law from taxation, is

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## SCHEDULE F.

*Form of Declaration by party complaining of overcharge in respect of personal property and taxable income:—*

I, A. B. (*set out name in full, with place of residence, business, trade, profession or calling*), do solemnly declare that the true value of my personal property, other than income, is (*If there are debts, add*)—that I am indebted on account of such personal property in the sum of that my gross income derived from all sources, not exempt by law from taxation, is and that the full amount for which I am by law justly assessable in respect of both personal property and income is

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## SCHEDULE G.

*Form of Declaration by agent of a party complaining of overcharge on personal property:—*

I, A. B. (*set out name in full, with place of residence, business, trade, profession or calling*), agent for C. D. (*set out name in full, with place of residence and calling of person assessed*), do solemnly declare that the true value of all the personal property assessable against the said C. D. (*or as the case may be*, as trustee, guardian, or executor, &c.), is (*In case there are debts in respect of the property, add*)—the said C. D. is indebted on account of such personal property in the sum of and that the true amount for which the said C. D. is liable to be rated and assessed in respect of personal property other than income is and that I have the means of knowing, and do know, the extent and value of the said C. D.'s personal property, and debts in respect thereof.

A. B.

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## SCHEDULE H.

*Form of Declaration by agent of party complaining of overcharge in taxable income:—*

I, A. B. (*set out name in full, with place of residence, business, trade, profession or calling*), agent for C. D. (*set out name in full, with places of residence and calling of person assessed*), do solemnly declare that the gross income of the said C. D., derived from all sources, not exempt from taxation by law, is and that I have the means of knowing, and do know, the income of the said C. D.

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## SCHEDULE I.

*Form of Declaration by agent of party complaining of an overcharge in respect of personal property and taxable income:*

I, A. B. (*set out name in full, with place of residence, business, trade, profession or calling*), agent for C. D. (*set out name in full, with place of residence and calling of person assessed*), do solemnly declare that the true value of the personal property of the said C. D., other than income, is that the gross income of the said C. D.

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derived from all sources, not exempt by law from taxation, is and that the full amount for which the said C. D. is justly assessable in respect of both personal property and income is

(*If there are debts on account of the property, add*)— the said C. D. is indebted on account of such personal property in the sum of and that I have the means of knowing, and do know, the truth of the matters hereinbefore declared.

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## AN ACT TO AMEND CHAPTER THIRTY-SIX OF THE STATUTES OF ONTARIO, ENTITLED "AN ACT TO AMEND AND CONSOLIDATE THE LAW RESPECTING THE ASSESSMENT OF PROPERTY IN THE PROVINCE OF ONTARIO," PASSED IN THE THIRTY-SECOND YEAR OF THE REIGN OF HER MAJESTY.

(33 VIC., CAP. 27.)

WHEREAS it is expedient to amend the above recited Act; Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:— Preamble.

**1.** That sub-section twelve of section nine of the said Act be amended by inserting the word "while" before the word "occupied" in the first line. Sub-s. 12 of sec. 9 amended.

**2.** That sub-section fourteen of section nine of said Act be amended by adding the following words thereto: "and the income of merchants, mechanics or other persons, derived from capital liable to assessment." Sub-s. 14 of sec. 9 amended.

**3.** That sub-section number seventeen of the said section nine be amended by adding thereto the words following: "and the shares in building societies, Provided always the interest and dividends derived from shares in such building societies shall be liable to be assessed: and so much of the personal property of any person as is invested in any company incorporated for the purpose of lending money on the security of real estate, Provided that this shall not exempt the interest or dividends derived from such investments." Sub-s. 17 of sec. 9 amended.

**4.** That sub-section twenty-two of said section nine be repealed, and the following substituted: "The stipend or salary of any clergyman or minister of religion, while in actual connection with any church, and doing duty as such clergyman or minister to the extent of one thousand dollars, Sec 9, sub-s. 22, amended

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and the parsonage or dwelling-house occupied by him, with the land thereto attached, to the extent of two acres, and not exceeding two thousand dollars in value."

Sec. 30 amended.

**5.** That section thirty of said Act be amended by adding the following words: "Provided that in estimating the value of mineral lands, such lands and the buildings thereon shall be valued and estimated at the value of other lands in the neighbourhood for agricultural purposes, but the income derived from any mine or mineral work shall be subject to taxation in the same manner as other incomes under this Act."

Sec. 89 amended.

**6.** That section eighty-nine of the said Act be amended by adding the following words after the word "value" in the tenth line: "Provided always that whenever one person shall be assessed for lots or parts of several lots in one Municipality, not exceeding in the aggregate two hundred acres, the said part or parts shall be rated and charged for statute labour as if the same were one lot, and the statute labour shall be rated and charged against any excess of said parts in like manner."

Sec. 103 amended.

**7.** That section one hundred and three of the said Act be amended by erasing the word "April," and inserting instead thereof the word "February."

Sub-s. 2 of sec. 138 amended.

**8.** That sub-section two of section one hundred and thirty-eight of said Act be hereby repealed, and the following sub-section substituted therefor, and the said section shall be read as if the said substituted sub-section had been inserted in the said Act originally:

(2.) If the Treasurer fails at such sale to sell any land for the full amount of arrears of taxes due, he shall at such sale adjourn the same until a day then to be publicly named by him, not earlier than one week nor later than three months thereafter, of which adjourned sale he shall give notice by public advertisement in the local newspaper, or in one of the local papers in which the original sale was advertised; and on such day he shall sell such lands, unless otherwise directed by the local Municipality in which they are situate, for any sum he can realize, and shall accept such sum as full payment of such arrears of taxes; but the owner of any land so sold shall not be at liberty to redeem the same, except upon payment to the County Treasurer of the full amount of taxes due, together with the expenses of sale; and the Treasurer shall account to the local Municipality for the full amount of taxes that shall be paid.

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**9.** That section one hundred and eleven of the said Act be amended by erasing the word "and" in the eleventh line, and inserting in lieu thereof the word "whether," and by inserting after the word "Municipality" in the same line the words "or not." Sec. 111 amended.

**10.** That section one hundred and fifty-six of the said Act be amended by adding thereto the following words: "Provided that in the absence of any such by-law the County Treasurer shall pay over to the Local Treasurer all such monies when so collected." Sec. 156 amended.

**11.** Section one hundred and thirty-two of the said Act is hereby amended by striking out the words "twenty-nine" between the words "and" and "if" in the second and third lines thereof, and inserting instead thereof the words "twenty-eight." Sec. 132 amended.

**12.** That sub-section two of section seventy-one of the said Act be amended by inserting the following words after the word "shall," in the second line: "after having so increased or decreased as aforesaid." Sec. 71, subs. 2, amended.

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## AN ACT TO AMEND THE ASSESSMENT ACT OF ONTARIO PASSED IN THE THIRTY-SECOND YEAR OF THE REIGN OF HER MAJESTY, CHAPTERED THIRTY-SIX.

(34 VIC., CAP. 28.)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

**1.** That sub-section twenty-five of section nine of the Act passed in the thirty-second year of Her Majesty's reign, and chaptered thirty-six, be repealed. Sub-s. 25 of s. 9 repealed.

**2.** That section eighty-four of the said Act be amended by inserting after the word "Township," in the first line, the words "Town or Village." Sec. 84 amended.

**3.** That section eighty-six of the said Act be amended by inserting after the word "Townships," "Towns and Villages." Sec. 86 amended.

**4.** That section one hundred and fifty of the said Act be amended by erasing the letter "B," in the second line, and inserting therefor the letter "C." Sec. 150 amended.



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## AN ACT TO AMEND THE ASSESSMENT LAW.

(37 Vic., Cap. 19.)

WHEREAS it is expedient to amend the Assessment Act of 1869, and the Act passed in the thirty-third year of Her Majesty's reign, chaptered twenty-seven, amending the said Act:

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Realty within, but owned out of Ontario, to be assessable.

**1.** All real property situate within the Province of Ontario, and owned out of this Province, shall be liable to assessment in the same manner and subject to the like exemptions as other real property under the provisions of the said recited Act.

Personalty in control of agent for non-resident owner assessable.

**2.** All personal property within the Province in the possession or control of any agent or trustee for or on behalf of any owner thereof, who is resident out of this Province, shall be liable to assessment in the same manner and subject to the like exemption as in the case of the other personal property of the like nature under the said Act or of this Act.

Dividends only of bank stock to be assessed.

**3.** The shares held by any person in the capital stock of any incorporated or chartered bank doing business in this Province, shall be exempt from assessment for municipal or other local rates or taxes; but any interest, dividends or income derived from any such shares held by any person resident in this Province, shall be deemed to come within and to be liable to assessment under the thirty-fifth section of the Assessment Act of 1869.

Occupant for non-resident owner may be assessed as owner in certain cases.

**4.** In the case of real property owned by a person not resident within this Province, who has not required his name to be entered on the assessment roll, then if the land be occupied it shall be assessed in the name of and against the occupant as such, and he shall be deemed the owner thereof, for the purpose of imposing and collecting taxes upon and from the same land under the provisions of the Assessment Act; but if the land be not occupied, and the owner has not requested to be assessed therefor, then it shall be assessed as land of a non-resident, according to the provisions of the thirty-fourth section of the Assessment Act of 1869; and it shall not be necessary that the name of such non-resident or owner be inserted in the assessment roll.

When land may be assessed as non-resident.

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but it shall be sufficient to mention therein the name of the reputed owner, or the words "owner unknown," according to the assessor's knowledge or information.

When personalty of non-residents may be assessed against the agent therefor.

**5.** In the case of the personal property of a person not resident within this Province, it shall be assessed in the name of and against any agent, trustee or other person, who is in the control or possession thereof, and shall be deemed to be the individual property of such agent, trustee or other person, for all objects within the said Assessment Act.

Salaries, &c. to be assessed at the place where earned.

**6.** Every person who holds any appointment or office of emolument to which an annual salary, gratuity or other compensation is attached, and performs the duties of such appointment or office, within a Municipality in which he does not reside, shall be assessed in respect of the amount of such salary, gratuity or other compensation at the place where he performs such duties, and he shall not be assessable therefor at his place of residence, but, if required, shall procure a certificate of being otherwise assessed under the provision of this section: Provided that this section shall not apply to County Municipal Officers.

Sec. 149 amended as to words treasurer and warden.

**7.** The words "Treasurer" and "Warden" in section one hundred and forty-nine of the said Act are declared to mean the persons who at the time of the execution of the deed in such section mentioned may hold the said offices.

*Revision of Assessment Roll.*

Time when assessors to complete and deliver rolls to clerk.

**8.** In each year every assessor shall begin to make his roll not later than the fifteenth day of February, and shall complete the same on or before the thirtieth day of April; and on the first day of May he shall deliver the said completed roll to the Clerk of the Municipality, with the certificates and affidavits required by law attached; and the Clerk shall file the same immediately upon the receipt thereof.

Oath of members of Court of Revision.

**9.** Every member of the Court of Revision, before entering upon his duties, shall take and subscribe, before the Clerk of the Municipality, the following oath (or affirmation in cases where by law affirmation is allowed):

"I, , do solemnly swear [or affirm] that I will, to the "best of my judgment and ability, and without fear, favour "or partiality, honestly decide the appeals to the Court of "Revision which shall be brought before me for trial as a "member of said Court."

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Sec. 57 amended.

**10.** Section fifty-seven of said Act is hereby repealed, and the following section substituted therefor:

Penalty to witnesses who refuse to attend.

"57. If any person summoned to attend the Court of "Revision as a witness fail, without good and sufficient "reason, to attend (having been tendered compensation for "his time at the rate of fifty cents a day), he shall incur a "penalty of twenty dollars, to be recoverable, with costs, by "and to the use of any person suing for the same, either by "suit in the proper Division Court, or in any way in which "penalties incurred under any by-law of the Municipality "may be recovered."

When first meeting of the Court to be held.

**11.** The first sittings of the Court of Revision shall not be held until after the expiration of at least ten days from the expiry of the time within which notice of appeals may be given to the Clerk of the Municipality; and the advertisement which the said Clerk is required, by the sixth sub-section of section sixty of the Act hereby amended, to publish, of the time at which a Court of Revision will hold its first sittings for the year, shall be published at least ten days before such time; and the final revision by the said Court of the said roll shall be made on or before the first day of July in each year.

To be advertised by clerk.

Time within which notices of appeal to the court are to be given.

**12.** The notice to be given to the Clerk under sub-sections one and two of the sixtieth section of the said Act, is to be given within fourteen days after the first day of May, required for the return of the roll, or within fourteen days after the return of the roll, in case the same is not returned within the time fixed for that purpose.

Clerk may require assistance in making services.

**13.** When necessary, the Clerk of the Municipality may, at the cost of the Municipality, call to his aid such assistance as may be required to effect the services which he is required by law to make; and in the event of his failure to effect any such services in time for the first sitting of the Court, the Court, in its discretion, may appoint an adjourned sitting, for the purpose of hearing the appeals for which the services were not effected in time for the first day, and the proper services shall be made for such adjourned day.

Power to adjourn.

Order of hearing appeals.

**14.** The Clerk of the Court shall enter the appeals on the list in the order in which they are received by him, and the Court shall proceed with the appeals in the order, as nearly as may be, in which they are so entered, but may grant an adjournment or postponement of any appeal.

Postponement.

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**15.** It shall not be necessary to hear upon oath the complainant or assessor, or the party complained against, unless where the Court deems it necessary or proper, or the evidence of the party shall be tendered on his own behalf or required by the opposite party. Oaths of certain parties not necessary.

**16.** The sixty-third section of the said Act is hereby repealed, and the following substituted therefor:— Sec. 63 amended.

"63. An appeal to the County Judge shall lie, not only "against a decision of the Court of Revision on an appeal "to said Court, but also against the omission, neglect, or "refusal of said Court to hear or decide an appeal, and in "such case— Appeal from court of revision.

(1.) "The person appealing shall, in person or by his "attorney or agent, serve upon the Clerk of the Municipality, within five days after the first day of July, a written "notice of his intention to appeal to the County Judge; Service of notice of appeal.

(2.) "The Judge shall notify the Clerk of the day he "appoints for hearing appeals; Day for hearing.

(3.) "The Clerk shall thereupon give notice to all the "parties appealed against in the same manner as is provided "for giving notice of complaint by the sixtieth section of "this Act; but in the event of failure by the Clerk to have "the required service in any appeal made, or to have the "same made in proper time, the Judge may direct service "to be made for some subsequent day upon which he may "sit; Clerk to notify parties.

(4.) "The Clerk of the Municipality shall cause a conspicuous notice to be posted up in his office, or the place "where the Council of the Municipality hold their sittings, "containing the names of all the appellants and parties "appealed against, with a brief statement of the ground or "cause of appeal, together with the date at which a Court "will be held to hear appeals; List of appellants, &c., to be posted up by clerk.

(5.) "The Clerk of the Municipality shall be the Clerk of "such Court; Clerks of court.

(6.) "At the Court so holden, the Judge shall hear the "appeals, and may adjourn the hearing from time to time, "and defer judgment thereon at his pleasure, so that all the "appeals be determined before the first day of August." Hearing and adjournment.

**17.** In proceedings before the County Judge or acting Judge of the Court under the said Act, the Judge shall, with reference to the matters mentioned in the sixty-sixth Powers of judge sitting in appeal from court of revision.

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section of the said Act, have the powers which belong to or might be exercised by him in the Division Court, or in the County Court, and all process or other proceedings in, about, or by way of appeal, may be entitled as follows:—

Style of proceedings.

"In the matter of appeal from the Court of Revision of "the of .

"

, Appellant,

and

"

, Respondent;"

and the same need not be otherwise entitled.

Costs, how collected.

**18.** Where costs are ordered to be paid by any party claiming or objecting, or objected to or by any assessor, Clerk of a Municipality, or other person, the same shall hereafter be enforced by execution, to be issued as the Judge may direct, either from the County Court or the Division Court within the County of which the Municipality or assessment district, or some part thereof, is situated, in the same manner as upon an ordinary judgment, for costs recovered in such Court.

What costs chargeable.

**19.** The costs chargeable or to be awarded in any case may be the costs of witnesses, and of procuring their attendance, and none other; and the same are to be taxed according to the allowance in the Division Court for such costs; and in cases where execution shall issue, the costs thereof, as in the like Court, and of enforcing the same, may also be collected thereunder.

Schedule B amended as to giving notice of appeal.

**20.** Schedule B to the Assessment Act of 1869 is hereby amended, so that the period for giving notice of appeal from the assessment shall be within fourteen days after the time fixed for the return of the roll, instead of from the leaving of the notice.

Repealing clause.

**21.** All sections or parts of sections of the Act hereby amended, inconsistent with the provisions of this Act, are hereby repealed.

Sec. 71, sub. 2, repealed.

**22.** The second sub-section of the seventy-first section of the Assessment Act of 1869 is hereby repealed, and the following substituted:—

Equalizing rolls of towns and villages.

"In equalizing the rolls of the Towns and Villages, the "County Council shall take sixty per cent. of the amounts "returned on the rolls as the valuation of such Towns and "Villages, for the purposes mentioned in the preceding sub-"section, and the County Council shall then proceed to

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"equalize the valuations in the several Municipalities, "including the said Towns and Villages, and it shall be "competent for the County Councils to increase or diminish "the reduced valuations of the respective Towns and Vil- "lages, as well as the valuation of the Townships."

Sec. 71, sub. 3, amended.

**23.** The third sub-section of the said section seventy-one is hereby amended by inserting after the word "decreasing" the words following: "or refusing to increase or decrease," and by striking out the words "the aggregate of" in the second line, and by striking out in the third line of the said section the words "made by the assessors."

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# RULES OF COURT

FOR THE

## TRIAL OF CONTESTED ELECTIONS, AND TARIFF OF FEES.

In the Courts of Queen's Bench and Common Pleas.

MICHAELMAS TERM, 14TH VICTORIA.

WHEREAS, by an Act passed by the Parliament of this Province in the twelfth year of Her Majesty's reign (cap. 81), entitled, "An Act to provide by one general law for the erection of Municipal Corporations, and the establishment of Regulations of Police, in and for the several Counties, Cities, Towns, Townships and Villages in Upper Canada," power was given to Her Majesty's Court of Queen's Bench in Upper Canada, and the several Judges thereof, to try and decide all matters relating to contested Municipal Elections as therein provided; And whereas, by the Act of the last session of Parliament (chapter 64), entitled, "An Act for correcting certain errors and omissions in the Act of the Parliament of this Province, passed in the last session thereof, entitled, 'An Act to provide by one general law for the erection of Municipal Corporations, and the establishment of Regulations of Police, in and for the several Counties, Cities, Towns, Townships and Villages in Upper Canada,' for amending certain of the provisions of the said Act, and making some further provisions for the better accomplishment of the object thereof," the powers conferred on the said Court and Judges have been extended to the Court of Common Pleas and the Judges thereof, and additional powers have been thereby given in the premises to the said Courts and Judges respectively; and it being, among other things, in effect enacted, that it should and might be lawful for the Judges of Her Majesty's two Superior Courts of Common Law at Toronto, or the majority of them, by any rule or rules to be by them for that purpose made, from time to time in Term time, as occasion may require, to settle the forms of all such writs,

12 Vic. cap. 81, sec. 146, *et seq.*

16 Vic. cap. 181, sec. 27.

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whether of summons, certiorari, mandamus, execution, or of or for whatever other kind or purpose, as are authorized by the said Act. Therefore, in order to settle the said forms, and to regulate the practice and proceedings in the said Courts in the matter aforesaid,

IT IS ORDERED, that the following Rules be substituted for the Rules made in Hilary Term last, by the Judges of the said Court of Queen's Bench, for the trial of such elections; and that the forms of such writs, and the practice to be observed with respect to the matters aforesaid, shall be as follows, that is to say:—

**1.** The relator entitled to complain of any election shall in person or by attorney, by written motion, apply to one of the said Courts of Queen's Bench or Common Pleas in Term time, or to the Judge presiding in Chambers in vacation, for a writ of summons in the nature of a quo warranto, which motion must, according to the statute, be made within six weeks after the election complained against, or within one month after the person whose election is questioned shall have accepted the office, and not afterwards.

**2.** Such motion shall be founded, first, on a written statement, which shall be annexed to the motion paper, setting forth the interest which the relator has in the election, as candidate or voter, and setting forth also specifically, under distinct heads separately numbered (if there be more than one), all such grounds of objection as he intends to urge against the validity of the election complained against, and in favour of the validity of the election of the relator or another or other person or persons, when he shall claim that he or they or any of them have been duly elected; and at the foot of such statement there shall be an affidavit, made and signed by the relator, that he believes such grounds to be well founded: and, secondly, on an affidavit or affidavits of the relator, or other person or persons, setting forth fully and in detail the facts and circumstances which shall support the application.

The statement of the relator may be after the following form, *mutatis mutandis:*

STATEMENT OF THE RELATOR.

IN THE QUEEN'S BENCH (*or* COMMON PLEAS).

The statement and relation of ——, of ——, who, complaining that ——, of —— (*here inserting the names and additions of all, if more than one person*), hath (*or have*) not been duly elected, and hath

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(*or have*) unjustly usurped and still doth (*or do*) usurp the office of ——, in the Town of —— (*or Township of* ——, *as the case may be*), in the County (*or United Counties*) of ——, under the pretence of an election held on ——, at ——, in the said County (*or United Counties*) [and (*when it is claimed that the relator, or the relator and another, or others, ought to have been returned*) that (*here name the party or parties so entitled*) was (*or were*) duly elected thereto, and ought to have been returned at such election], and declaring that he the said relator hath an interest in the said election as a ——, states and shows the following causes why the election of the said —— to the said office should be declared invalid and void. [And (*when so claimed*) the said —— (*naming the party or parties*) be duly elected thereto.]

*First*—That (*for example*) the said election was not conducted according to law, in this, that, &c.

*Second*—That the said —— was not duly or legally elected or returned, in this, that, &c.

*Third*—That, &c.

Signed by the relator in person, or by C. D. his attorney.

NOTE.—Where the intention of the relator is to impeach the election as altogether void, in which event, as the office cannot be claimed for any other or others, the portion of the above and succeeding forms relating thereto should be omitted.

**3.** If the Court or Judge applied to shall find sufficient ground for issuing a writ of summons in the nature of a *quo warranto*, then, upon such recognizance being entered into as the Act directs, and a proper affidavit of justification made, and the sufficiency of the sureties allowed by such Court or Judge, a writ shall issue, sealed and tested as other writs of summons in cases between party and party, and attached thereto shall be a copy of the relator's statement of objections and grounds, and of the names and additions of the persons who shall have made the affidavits upon which the writ was moved.

The recognizance and fiat for summons, and the writ of summons in these Rules mentioned, may be in the following forms:

## FORM OF RECOGNIZANCE.

IN THE QUEEN'S BENCH (*or* COMMON PLEAS).

UPPER CANADA, County (*or United Counties*) of ——. Be it remembered, that on the —— day of ——, in the year of our Lord one thousand eight hundred and ——, before me, ——, of ——, Chief Justice (*or a Justice, or a Commissioner for taking bail*) in Her Majesty's Court of Queen's Bench (*or Common Pleas*) for Upper Canada, cometh ——, of ——, and ——, of ——, and acknowledge themselves severally and respectively to owe to ——, of —— (*here inserting the name or names of the person whose election is complained against*), as follows, that is to say, the said——, the sum of fifty pounds, and the said —— and —— the sum of twenty-

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five pounds each, upon condition that if the said —— do prosecute with effect the writ of summons in the nature of a *quo warranto* to be issued on an order or fiat to be made at the instance and upon the relation of the said ——, against the said ——, to show by what authority he (*or they*) the said —— claims (*or claim*) to be (*here state the office so claimed*), and why he (*or they*) the said —— should not be removed therefrom [and (*where so claimed by the relator*) why he the said relator (*or the party or parties entitled*) should not be declared duly elected, and be admitted to the said office]; and if the said —— do pay to the said —— all such costs as the said Court of —— (*or the Judge presiding in Chambers, at the City of Toronto, in the County of York*) shall direct in that behalf, then this recognizance to be void, otherwise to remain in full force.

Taken and acknowledged the day and year first above mentioned,

Before me, ——.

## FORM OF A JUDGE'S FIAT ORDERING A WRIT TO ISSUE IN VACATION.

IN THE QUEEN'S BENCH( *or* COMMON PLEAS).

Upon reading the statement of ——, of ——, in the County of ——, complaining of the undue election and usurpation of the office of ——, by —— [and (*if so, stating*) that the said —— (*relator or other person named*) was (*or were*) duly elected, and ought to have been returned to the said office], and upon reading the affidavits filed in support of the said statement, and also upon reading the recognizance of the said ——, and sureties therein named, and the same being allowed as sufficient, I do order that a writ of summons do issue, calling upon the said —— (*the party whose election is complained of*) to show by what authority he (*or they*) the said —— (*the party whose election is complained of*) now exercises or enjoys (*or exercise and enjoy*) the said office [and why (*if so claimed*) he (*or they*) the said —— should not be removed therefrom, and the said —— (*relator or other person or persons named*) should not be declared duly elected, and be admitted thereto].

Dated this —— day of ——, 18—.

NOTE.—If by Rule of Court, the above form should be modified accordingly.

## FORM OF WRIT OF SUMMONS.

UPPER CANADA.

VICTORIA, by the Grace of God, &c.

To ——, of ——, &c., in the County (*or United Counties*) of ——.

We command you (*and each of you*) that you (*and each of you*) be and appear before the Chief Justice or other Justice of our Court of Queen's Bench (*or Common Pleas*) for Upper Canada, presiding in Chambers, at the Judges' Chambers in our City of Toronto, on the eighth day after the day on which you shall be served with this writ, then and there to answer and show to such Chief Justice or Justice by what authority you claim to use, exercise or enjoy the office of ——, which office, upon the relation of ——, having, as he says, an interest in the election to the said office as a ——, we are

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informed that you have usurped and do still usurp [and that (*if so claimed*) the said —— (*relator or party or parties mentioned*) was (*or were*) and should have been declared duly elected and admitted thereto], and further to do and receive all those things which our said Chief Justice or Justice shall thereupon order concerning the premises.

Witness the Honourable ——, Chief Justice of our said Court of —— (*or other Justice in whose name the writ is tested*), at Toronto, this —— day of ——, 18—, and in the —— year of our reign.

## FORM OF NOTICE TO BE ENDORSED ON OR ANNEXED TO THE WRIT OF SUMMONS.

IN THE QUEEN'S BENCH (*or* COMMON PLEAS).

The Queen, upon the relation of ——, against ——.

To —— and ——, named in the within (*or annexed*) writ of summons.

The within (*or annexed*) writ of summons has been issued at my instance and relation; and a statement concerning the premises, whereof a copy is hereunto annexed, is filed in the office of the Clerk of the Crown in this Court (*or with the Clerk in Chambers at the City of Toronto*), together with affidavits supporting the same; and the names and additions of the deponents to the said affidavits are hereunder written. And you are served with the said writ of summons to the intent that you do appear and answer as therein commanded, or otherwise judgment will be given against you by your default, and your election to the therein mentioned office will be declared invalid, and you will be removed therefrom [and the said —— (*the relator, or ——, the party or parties, if any, alleged to be entitled*) therein named, be declared duly elected and will be admitted thereto in your place].

A. B. in person,
or by
C. D., his Attorney.

The above mentioned deponents are:

——, of ——.
——, of ——.

MINUTE OF THE DAY OF SERVICE TO BE WRITTEN ON THE SUMMONS.

Served this —— day of ——, 18—.

**4.** A copy of such summons, and of the paper attached thereto, with a notice on the back of the copy of summons, according to the foregoing form, may be served by any literate person, who shall, within twenty-four hours after such service, make a minute on the writ of the time of serving the same; and upon the return of the writ, the party or parties summoned may appear either in person or by attorney; and the manner of appearance shall be by endorsing

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on the back of the relator's statement attached to the motion paper: "The within named C. D., &c., appears in person (or by attorney, as the case may be) to answer the grounds of objection to his election, which are stated within."

**5.** If upon the return day of the summons the party or parties, having been duly served, shall not appear, then, on proof of such service by affidavit, according to the form subjoined, the Judge sitting in Chambers may, before rising on that day, direct an entry to be made as to such party or parties as make default, on the back of the relator's statement, thus: "The within named C. D. (and E. F.), being duly summoned, hath (or have) not appeared to answer to the matters within objected;" which entry shall be dated on the day of the return, and may be made on any subsequent day, if omitted to be made on that day.

FORM OF AFFIDAVIT OF SERVICE.

*When made personally, if service special under the 148th clause of the Statute 12 Vic. cap. 81, the affidavit to be modified accordingly.*

(See sec. 131, sub. 7, of the Municipal Act.)

IN THE QUEEN'S BENCH (*or* COMMON PLEAS).

The Queen, on the relation of ——, against ——.

——, of ——, in the ——, maketh oath and saith, that he did, on the —— day of ——, personally serve the above named defendant (*or defendants*) with the annexed writ of summons, by delivering to him (*or each of them*) a true copy thereof, on which said copy was endorsed a written notice, a copy whereof is hereto annexed, and to which said copy (*or copies respectively*) of the said writ was annexed a written copy of a statement of the above named relator, a copy of which said copy of statement is also hereunto annexed; and the deponent further saith, that the minute (*or minutes*) of the said service, written on the said writ of summons, was (*or were*) so written by this deponent within twenty-four hours after such service.

Sworn at ——, in the County of ——, this —— day of ——, 18—,
Before me, ——.

**6.** When it shall appear to the Court or Judge that the Returning Officer should be made a party, a writ of summons shall issue to him, in the following form, upon a Rule of Court to issue for that purpose, or upon the fiat of the Judge, which summons shall be served with the like papers annexed, and the service thereof proved in like manner as is provided for other writs of summons, as aforesaid: and the party served shall appear and enter his appearance within the same time after service, and in the same man-

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ner; and in default thereof, he shall be liable to have judgment pass against him in his absence, as in the case of any other defendant making a like default, and be dealt with by attachment, execution or otherwise, as the circumstances of the case may require.

## FORM OF WRIT OF SUMMONS TO A RETURNING OFFICER.

UPPER CANADA.

VICTORIA, by the Grace of God, &c.

Whereas, upon the relation of ——, in the Court of Queen's Bench (*or Common Pleas*), ——, it hath been ordered that a writ of summons should issue to ——, to show by what authority he (*or they*) claims or exercises (*or claim or exercise*) the office of ——. And whereas it appears to our Justices of our Court of Queen's Bench (*or Common Pleas*), before whom the said writ hath been made returnable (*or as the case may be*), that you were the Returning Officer by whom the said —— hath (*or have*) been returned as duly elected to the said office, and that it is proper you should be made a party to the proceeding aforesaid: These are therefore to summon you to be and appear before the Chief Justice or other Justice of our Court of Queen's Bench (*or Common Pleas*) for Upper Canada, presiding in Chambers, at the Judges' Chambers in our City of Toronto, on ——, then and there to answer such matters and things as shall then and there be objected against you, and further to do and receive all those things which said Court or said Justice shall thereupon order concerning you in the premises.

Witness, &c.

7. In case of default of appearance by any party summoned as aforesaid, the Judge recording the same may, as to such as make default, proceed *ex parte;* and as to such as shall have appeared, as is herein provided, proceed to determine the validity of the election or elections complained of, and also (if so claimed) of the election of the person or persons alleged to have been duly elected, and give judgment thereon; or he may, in his discretion, with or without any application for that purpose, and having regard to the distance of the place where the party was served, or other circumstances, appoint a further day for the appearance of the party or parties summoned, of which an entry shall be made and signed by the Judge to the following effect, at the foot of the entry of non-appearance on the back of the relator's statement: "Whereupon a further day is given to the said —— (or the said —— and ——) to appear on," &c.

On which day, or as soon after as may be convenient, if no further postponement shall be in like manner granted,

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the case may be heard, and disposed of in like manner as if the same had been determined and judgment given thereon, without granting a further day for appearance.

**8.** At any time before the hearing, any party may have copies of the affidavits filed, on paying for the same.

**9.** At the hearing the relator shall not be allowed to object to the election of the party or parties complained against, or to support the election or elections of the person or persons alleged to have been duly elected, on any ground not specified in the statement on which the summons was moved; but it shall nevertheless be in the discretion of the Judge, if he shall think fit, to entertain upon his own view of the case any substantial ground of objection to or in support of the validity of the election of either or any of the parties which may appear in the evidence before him.

**10.** When the party or parties summoned has or have appeared, no more formal answer need be made by him or them to the relator's case than by affidavits filed in answer; but the Judge before whom the case shall be pending may, in his discretion, require from either or any party further affidavits, or the production of any such evidence as the law allows.

**11.** In case of disclaimer under the statute 13 & 14 Vic. cap. 64, schedule A, No. 23, the provisions therein contained, and in sub-proviso No. 6, are to be observed. (See now sec. 144 *et seq.* of the Municipal Institutions Act.)

**12.** In case a necessity shall appear for sending an issue to be tried by a jury, the writ for that purpose may be in the following form, and shall issue on the fiat of the Judge directing the same, and bear date on the day of its issuing:

WRIT OF TRIAL.

[L.S.] VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To the Judge of the County Court of the County of ——,

GREETING:

Whereas, upon the trial of the validity of an election of ——, chosen upon the —— day of ——, to be —— for the Township of —— (*or as the case may be*), in the County of ——, and which election hath been complained of by E. F., as the relator, alleging (*as the case may be*) that he himself, or that he and C. D., &c., or that C. D. &c., was or were duly elected, and ought to have been returned, it hath become material to ascertain whether (*here stating concisely the issues to be tried*); and whereas it is desired by ——, our Chief

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Justice (*or Justice*) of our Court of Queen's Bench (*or Common Pleas*), before whom the same is pending, that the truth of such matters as aforesaid may be found by a jury: We do, therefore, pursuant to the statute in such cases made and provided, command you, that by twelve good and lawful men of the County of ——, who are in no wise akin to the said E. F., the relator in the said case, or to the said (*the other party or parties, naming him or them*), and who shall be sworn truly to try the truth of the said matters, you do proceed to try the same accordingly; and when the jury shall have given their verdict on the matters aforesaid, we command you that you do forthwith make known to our said Chief Justice (*or Justice*) what shall have been done by virtue of this writ, with the finding of the jury hereon endorsed.

Witness the Honourable ——, Chief Justice (*or Justice*) of our said Court, at Toronto, this —— day of ——, in the ——year of our reign.

FORM OF ENDORSEMENT OF VERDICT THEREON.

I hereby certify that on the —— day of ——, before me, L. M., Judge of the County Court of the County (*or United Counties*) of ——, came as well the within named relator as the within named —— (*the other party or parties*) by their attorneys (*or as the case may be*), and the jurors of the jury, by me duly summoned as within commanded, also came, and being sworn to try the matters within mentioned on their oath, said that, &c.

**13.** When the Judge before whom any such case shall be pending shall have determined the same, either *ex parte* in case of default, or on hearing the parties, or partly *ex parte* and partly on hearing the parties, he shall make up and annex to the statement of the relator, and to the affidavits and other papers filed in the case, a written judgment, attested by his signature, and dated on the day of the same being signed, in which it shall be sufficient to state concisely the ground and effect of the judgment, which judgment may be at any time amended by the same Judge, in regard to any matter of form. And the following may be the form of judgment when in favour of the relator:

IN THE QUEEN'S BENCH (*or* COMMON PLEAS).

The Queen, on the relation of ——, against ——.

Be it remembered, that on the —— day of ——, in the year of our Lord one thousand eight hundred and ——, at the Judges' Chambers in the City of Toronto, before me, ——, Chief Justice (*or Justice*) of Her Majesty's Court of Queen's Bench (*or Common Pleas*), came as well the above named relator by ——, his attorney, as the above named —— by his (*or their*) attorney, and service of the writ of summons hereunto annexed having been duly proved upon affidavit, and upon the said day and upon other days thereafter, at his Chambers aforesaid, having heard and read the statement and proofs of the said relator, touching and concerning the usurpation by him alleged against the said —— of the office of ——, in the said writ of

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summons mentioned [and (*if so*) the election of (*the party or parties named*) thereto], and the answers and proofs of the said ——; and having heard the said parties by their counsel (*or as the case may be*), and upon due consideration of all and singular the premises, now, that is to say, this —— day of ——, in the year aforesaid, I do adjudge and determine:

*First*—That the said relator had, at the time of his making his aforesaid complaint, an interest in the election to the said office of —— as ——.

*Second*—That, &c.

*Third*—That, &c.

*Fourth*—That the said —— hath (*or have*) usurped, and doth (*or do*) still usurp the said office, and that he (*or they*) be removed therefrom [or that the election of —— to the said office was void, and that he (*or they*) be removed therefrom (*as the judgment may be*)]: And that the said relator (*or* the said [*naming the party or parties whose election is affirmed, when he or they are adjudged to be entitled to the said office*] was (*or were*) duly elected thereto, and ought to have been returned, and is (*or are*) entitled in law to be received into, and to use, exercise and enjoy the said office: And I do adjudge and determine that the said —— do not in any manner concern himself (*or themselves*) in or about the said office, but that he (*or they*) be absolutely forejudged and excluded from further using or exercising the same, under pretence of the said election [and further, that the said (*naming the relator or parties whose election is affirmed*) be (*or be respectively*) admitted to the said office in his (*or their*) place or places: [And I do further order, adjudge and determine, that the said relator do recover against the said —— his costs and charges by him in and about the said relation and the prosecution thereof expended, to be taxed in the said Court.

All which the said writ of summons, and the said judgment, and the statements, answers and proofs of the said relator and of the said ——, and all other things had before me touching the same, I do hereby certify and deliver into the said Court, according to the form of the statute in such case made and provided.

E. F., *J.*

And the following may be the conclusion of a judgment for the defendant, to follow the word *affidavit*, in the foregoing form:

Thereupon now at this day, that is to say, on the —— day of —— aforesaid, at the Judges' Chambers at Toronto aforesaid, all and singular the relation and proofs of the said relator, and the answers and proofs of the said —— being seen and fully understood, I do consider and adjudge that the said office of —— so claimed by him (*or them*) the said —— be allowed and adjudged to him (*or them*); that the said —— be dismissed and discharged of and from the premises above charged upon him (*or them*); and also that he (*or they*) the said —— do recover against the said relator his (*or their*) costs by him (*or them respectively*) laid out and expended in defending himself (*or themselves*) in this behalf. All which, &c. (*as in the judgment for the relator*).

When the Returning Officer is made a party, the judgment to be modified accordingly.



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**14.** When the judgment of the Judge in Chambers shall have been returned into Court according to the statutes, and after the end of four days after such return, and if no rule shall have been granted to set aside or amend the judgment, the relator or person (or persons) in whose favour the judgment shall have been given, shall be at liberty to tax his or their costs, and the following entry shall be made under or upon the record of the judgment, after which execution may issue:

Afterwards, that is to say, on the —— day of ——, in the —— year of the reign of our Lady the Queen, cometh the said ——, and prayeth that his (*or their*) said costs, so as aforesaid adjudged to him (*or them*), be taxed and assessed according to the form of the statute in such case made and provided, and the said costs of the said ——, in and about his (*or their*) prosecution (*or defence*) aforesaid, and [(*when the Returning Officer is a party*) of the said ——, in and about his defence aforesaid], so as aforesaid adjudged to him (*or them*), are now here accordingly taxed and assessed as follows, that is to say, the costs of the said —— at the sum of —— [and the costs of the said —— (*when Returning Officer entitled thereto*), at the sum of ——], and the said ——, in mercy, &c.

**15.** The writs of certiorari and mandamus which it may become necessary to issue in any such case will be in the common form of such writs, the command therein contained being suited to the circumstances of each case, and, when applicable, the following form may be used:

FORM OF A WRIT OF MANDAMUS,

*To remove the person (or persons, being less than the whole number of members of any Municipal Corporation) whose election is adjudged invalid, and to admit the person or persons adjudged lawfully elected.*

VICTORIA, &c.

To the Municipal Corporation of —— (*the Town, Township or City.*)

Whereas on the —— day of ——, in the year of our Lord one thousand eight hundred and ——, at the Judges' Chambers in the City of Toronto, before ——, Chief Justice (*or one of the Justices*) of our Court of Queen's Bench (*or Common Pleas*) for Upper Canada, it was by the said Chief Justice (*or Justice*) adjudged and determined that ——, of ——, had usurped, and did then usurp, the office of —— [and that —— was (*or were*) duly elected thereto, and ought to have been returned, and was (*or were*) entitled in law to be received into, and to use, exercise and enjoy the said office], all which has by the said Chief Justice (*or Justice*) been duly certified into our Court of Queen's Bench (*or Common Pleas*), pursuant to the statute in that behalf. Now, we, being willing that speedy justice be done in this behalf, as it is reasonable, command that the said (*the person or persons, naming him or them, whose election has been declared invalid*) do not in any manner concern himself (*or themselves*) in or about the said office, but that he (*or they*) be absolutely forejudged,

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removed and excluded from further using or exercising the same, under pretence of his (*or their*) election thereto.* [And we do further command that the said (*the person or persons, naming him or them, who has or had been adjudged lawfully elected*) be forthwith admitted, received and sworn into the said office, to use, exercise and enjoy the same.] And we do hereby command you, and every of you, to obey, observe and do all and every act, matter and thing that may be necessary on the part of you or any of you in the premises, according to the purport, true intent and meaning of these presents, and of the statutes in that behalf, and that you make known to our Court of Queen's Bench (*or Common Pleas*) at Toronto, on the —— day of ——, how this writ shall have been executed.

Witness, &c.

## FORM OF A WRIT OF MANDAMUS,

*When neither the election of the person or persons (less than the whole number of members of the Municipal Corporation) who has (or have) been returned, nor the person or persons claimed to be returned is (or are) held valid, and for a new election.*

VICTORIA, &c.

To the Municipal Corporation of ——, and to any Returning Officer or other person or persons to whom it shall of right belong to do any act necessary to be done, touching the election hereinafter commanded to be held.

Whereas (*as in the last precedent to the asterisk, omitting the part between brackets, and then proceed as follows:*) And we do further command that you the said Municipal Corporation, and any Returning Officer or other person or persons, or such of you to whom the same shall of right belong, that you do, pursuant to and according to the statute in that behalf, cause an election to be as speedily held as shall be lawful, for the election of a person (*or persons*) in the place or stead of the said ——, who has (*or have*) been removed as aforesaid; and that you, or such of you to whom the same doth of right belong, do administer to the person (*or persons*) who shall be so elected the oath (*or oaths*), if any, in that behalf by law directed; and that you admit, or cause to be admitted, such person (*or persons*) so elected into the said office, and that you, the said Municipal Corporation, do show how this writ shall have been executed to our Court of Queen's Bench (*or Common Pleas*) at Toronto, on the —— day of ——.

Witness, &c.

## FORM OF A WRIT OF MANDAMUS,

*Directed to the Sheriff, where the elections of all the members of any Municipal Corporation have been adjudged invalid, and for the admission of those adjudged to have been legally elected.*

VICTORIA, &c.

To the Sheriff of the County (*or United Counties*) of ——,

GREETING:

Whereas (*the same as in the first precedent of a mandamus, to the end of the words "adjudged and determined," then say:*) that the election (*or elections*) of all the members of the Municipal Corporation

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of ——, returned as elected at the election (*or elections*) of members of the said Corporation held (*describing the time or times and place or places of such election* [or elections]) was (*or were*) invalid or void in law, and that (*naming them all*) had usurped (*proceeding as in the first precedent, adopting the plural form, to the asterisk, and then as follows:*) And we do hereby further command you the said Sheriff, that you do, pursuant to the statute in that behalf, admit and return and swear into, or cause the said —— (*naming the person adjudged to have been duly elected*) to be forthwith admitted or returned, and sworn into the said office, to use, exercise and enjoy the same, and that you do and perform, or cause to be done and performed, all and every act or acts, thing or things necessary to be done and performed in the premises. And we hereby command and strictly enjoin all and every person or persons to whom the same shall lawfully belong, to be aiding and assisting you, and to do all and every lawful and necessary act to be done by him or them in the premises, according to the purport, true intent and meaning of these presents, and of the statutes in that behalf; and how you shall have executed this writ make known to our Court of Queen's Bench (*or Common Pleas*) at Toronto, on the —— day of —— next, and have then there this writ.

Witness, &c.

## FORM OF A MANDAMUS,

*To the Sheriff, when the elections of all the members of any Municipal Corporation have been adjudged invalid, and requiring others to be elected.*

VICTORIA, &c.

To the Sheriff, &c. (*as in the last precedent to the asterisk, omitting the part between brackets, and adopting the plural form, then concluding as follows:*) And that you do every act necessary to be done by you in order to the due election and admission of members of the said Corporation, in the place and stead of the persons whose elections have been so declared invalid; and we hereby command and strictly enjoin all and every person and persons (*continuing as in the last precedent to the end*).

Witness, &c.

The form of writs of execution for costs in any such case may be as follows:—

## FI. FA. AGAINST DEFENDANT FOR RELATOR'S COSTS.

UPPER CANADA.

VICTORIA, &c.

To the Sheriff of the County of ——,

GREETING:

We command you, that you levy, or cause to be levied, of the goods and chattels of C. D., late of —— [*add the description of the Returning Officer, where the execution is against him*], the sum of ——, which hath been lately adjudged to A. B., of ——, in our Court of Queen's Bench (*or Common Pleas*) at Toronto, according to the form of the statute in such case made and provided, for his costs by him laid out and expended in the prosecuting of a certain writ of summons in the nature of a *quo warranto*, issued out of our said

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Court against ——, at the relation of the said A. B., for usurping the office of ——, in our ——, of ——, in your County [*add, when the Returning Officer is a party,* "to which proceeding the said —— was made a party"], and whereof the said C. D. [&c.] is convicted, as in our said Court appears of record, and that you have that money before our Court of Queen's Bench (*or Common Pleas*) at Toronto, on the —— day of —— Term, to satisfy the said A. B. for his costs aforesaid, and have you then there this writ.

Witness, &c.

FI. FA. AGAINST THE RELATOR FOR THE DEFENDANT'S COSTS.

UPPER CANADA.

VICTORIA, &c.

To the Sheriff of the County (*or United Counties*) of ——,

GREETING:

We command you, that you levy, or cause to be levied, of the goods and chattels of A. B., late of ——, the sum of ——, which hath lately been adjudged to C. D., of ——, in our Court of Queen's Bench (*or Common Pleas*) at Toronto, according to the form of the statute in such case made and provided, for his costs by him laid out and expended in his defence upon a certain writ of summons in the nature of a *quo warranto*, issued out of our said Court against the said C. D., upon the relation of the said A. B., for usurping the office of —— in our —— of ——, in your County (*or Counties*); [*if the Returning Officer has been made a party, add here,* "to which proceeding E. F., the Returning Officer at the election of the said C. D. to the said office, was made a party,"] whereof the said A. B. is convicted, as in our said Court appears of record; and that you have that money before our said Court at Toronto, on the —— day of —— Term, to satisfy the said C. D. for his costs aforesaid, and have you then there this writ.

Witness, &c.

*N.B.—When the Returning Officer has been made a party, and is entitled to costs, the* fieri facias *must be framed accordingly.*

**16.** Contempts in disobeying writs of summons, certiorari, mandamus, or other process, rule or order of either Court, or of any Judge thereof acting in the execution of the powers conferred by the statutes 12 Vic. cap. 81, and 13 & 14 Vic. cap. 64, are to be certified into the Court from which the writ of summons issued, to be dealt with like other contempts of such Court in other cases.

**17.** If any of the forms given in the foregoing rules shall not be found adapted to a case which may arise in reference to proceedings connected with or resulting from the trial of the validity of Municipal elections, changes are to be made therein when necessary, at the discretion of the Judge who shall try and determine the case, to adapt the same to such particular case.

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**18.** None of the proceedings which shall be had in any case for trying the validity of any election, or which shall follow the determination thereof, shall be set aside or held void on account of any irregularity or defect which shall not, in the opinion of the Court or Judge before whom the objection is made, be deemed such as to interfere with the just trial and adjudication of the case upon the merits.

**19.** *Costs.*—The same table as authorized by the fifteenth rule of Hilary Term last, and any disbursements necessarily made, and not allowed for in the said table, may be taxed according to the table of fees generally established in the Court in which the proceedings shall be conducted.

(Signed) JNO. B. ROBINSON, C.J.
J. B. MACAULAY, C.J., *C.P.*
A. MCLEAN, J.
WM. H. DRAPER, J.
R. B. SULLIVAN, J.
ROBERT BURNS, J.

The costs taxable under Rule M. T. 1871, 35 Vic., are as follow:—(See 32 U. C. Q. B. 211.)

| CLERK IN CHAMBERS. | $ c. |
|---|---|
| For each fiat granted by a Judge for a writ of Quo Warranto or for a Rule of Court | 0 50 |
| For every summons | 0 25 |
| For every order | 0 50 |
| For filing each paper | 0 07 |
| Taking affidavit | 0 20 |
| For making up each final judgment of the Judge and returning the same into Court | 1 00 |
| Copies of papers, per folio of 100 words | 0 10 |
| Every search, if not more than two terms | 0 10 |
| " " if exceeding two terms and not more than four | 0 20 |
| " " if exceeding four terms or a general search | 0 50 |
| ATTORNEY. | |
| *Instructions*—To apply for a writ of summons or defend against | 2 00 |
| *Statement*—Of grounds of complaint, including fair copy | 2 00 |
| *Affidavits*—Whether special or common, per folio of 100 words | 0 20 |
| *Recognizance*—Drawing | 1 00 |
| *Attendances, Special*—At Chambers, for writ of summons, to serve writ, upon the argument, or to hear judgment | 1 00 |
| *Attendances, Common*—All other attendances not mentioned as special, each | 0 50 |
| *Writs*—Preparing writ of summons, writ of certiorari, mandamus, trial or writ of execution, each | 1 00 |
| Fee on each writ | 1 00 |
| *Notices*—Endorsement on writ of summons, every other endorsement upon writ, when required to be made, and all common notices, each | 0 50 |

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| | $ c. |
|---|---|
| *Copies*—Of statement or other papers and documents, when required to be made or served, half the amount allowed for the original, and where no specific sum is allowed, then copies of papers required, or which may be directed to be made, furnished or served, to be allowed per folio of 100 words | 0 10 |
| *Issues*—When directed to be tried, preparing same | 1 00 |
| *Disbursements*—Postages actually paid; mileage when it is necessary to employ parties to serve writs, papers, &c., the actual number of miles travelled to perform the service, per mile | 0 10 |
| (The affidavit must state the number of miles actually travelled, and also that the charge has been paid.) | |
| N.B. No instructions to be allowed nor attendances to swear affidavits. | |
| Instructions for briefs as in ordinary cases. | |
| Briefs, per folio of original matter, when necessary | 0 20 |
| Briefs, per folio of copy, when necessary | 0 10 |

COUNSEL.

| | |
|---|---|
| *Fee*—For argument upon the return of the writ of summons, if argued by counsel | 10 00 |
| To be increased at the discretion of the Judge, according to the importance of the case, to not exceeding | 20 00 |

CLERKS OF THE CROWN AND PLEAS AND THEIR DEPUTIES.

(*As per Statute 27 & 28 Vic., cap. 5.*)

| | |
|---|---|
| For taking recognizance | 0 50 |
| For signing and sealing each writ | 0 30 |
| For each order or Rule of Court | 0 50 |
| For filing each paper | 0 10 |
| Copies of papers, per folio of 100 words | 0 10 |

COMMISSIONER.

| | |
|---|---|
| For taking recognizance | 0 50 |
| Swearing each affidavit | 0 20 |

(Signed) WM. B. RICHARDS, C.J.
JOHN H. HAGARTY, C.J., *C.P.*
JOS. C. MORRISON, J.
ADAM WILSON, J.
JOHN W. GWYNNE, J.
THOMAS GALT, J.

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# APPENDIX.

## AN ACT RESPECTING CERTAIN ROADS AND BRIDGES.

(C. S. C., CAP. 85.)

HER MAJESTY, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Use of public roads in cities and towns vested in the municipality.

**1.** The right to use as public highway all roads, streets and public highways within the limits of any City or Incorporated Town in this Province, shall be vested in the Municipal Corporation of such City or Incorporated Town (except in so far as the right of property or other right in the land occupied by such highways have been expressly reserved by some private party when first used as such roads, street or highway, and except as to any Concession road or side road within the City or Town where the persons now in possession or those under whom they claim have laid out streets in such City or Town, without any compensation therefor, in lieu of such Concession or side road. 13, 14 V. c. 15, s. 1.

The corporation to repair, &c.

**2.** Such roads, streets and highways, so long as they remain open as such, shall be maintained and kept in proper repair by and at the cost of such Corporation, whether they were originally opened and made by such Corporation, or by the Government of this Province, or of either of the late Provinces of Upper or Lower Canada, or by any other authority or party. 13, 14 V. c. 15, s. 1.

Consequences of neglect.

**3.** If the Municipal Corporation of any such City or Incorporated Town fail to keep in repair any such road, street or highway within the limits thereof, such default shall be a misdemeanor, for which such Corporation shall be punished by fine in the discretion of the Court before whom the conviction is had; and such Corporation shall be also civilly responsible for all damages sustained by any party by reason of such default, provided the action for the re-

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covery of such damages be brought within three months after the same has been sustained. 13, 14 V. c. 15, s. 1.

Government roads may be ceded to.

**4.** Any public road or bridge made, built or repaired at the expense of the Province, and which was, on the tenth day of August, one thousand eight hundred and fifty, under the management and control of the Commissioners of Public Works, may, by Proclamation of the Governor, issued by and with the advice and consent of the Executive Council, be declared to be no longer under the management and control of such Commissioners. 13, 14 V. c. 15, s. 2.

After which municipal authorities to repair

**5.** From and after a day to be named in such Proclamation, such road or bridge shall cease to be under the management and control of such Commissioners, and no tolls shall be by them afterwards levied thereon, but such road or bridge shall be under the control of the Municipal authorities of the locality and of the road officers thereof, in like manner with other public roads and bridges therein, and shall be maintained and kept in repair under the same provisions of law. 13, 14 V. c. 15, s. 2.

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## AN ACT TO REGULATE TRAVELLING ON PUBLIC HIGHWAYS.

(C. S. U. C., CAP. 56.)

HER MAJESTY, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

### *Wheeled Carriages or Sleighs Meeting.*

Carriages meeting to drive to the right, giving half the road.

**1.** In case any person travelling or being upon any highway in charge of a vehicle drawn by one or more horses, or one or more other animals, meets another vehicle drawn as aforesaid, he shall turn out to the right from the centre of the road, allowing to the vehicle so met one half of the road. 18 V. c. 138, s. 2.

Carriage overtaken to turn to the right.

**2.** In case any person travelling or being upon any highway in charge of a vehicle as aforesaid, or on horseback, be overtaken by any vehicle or horseman travelling at greater speed, the person so overtaken shall quietly turn out to the right, and allow the said vehicle or horseman to pass. 18 V. c. 138, s. 3.

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If the weight of one of them prevents this.

**3.** In the case of one vehicle being met or overtaken by another, if by reason of the extreme weight of the load on either of the vehicles so meeting, or on the vehicle so overtaken, the driver finds it impracticable to turn out as aforesaid, he shall immediately stop, and, if necessary for the safety of the other vehicle, and if required so to do, he shall assist the person in charge thereof to pass without damage.

*Penalty if Driver Intoxicated.*

Penalty on drivers, &c., too drunk to manage their horses.

**4.** In case any person in charge of a vehicle, or of a horse or other animal used as the means of conveyance, travelling or being on any highway as aforesaid, be through drunkenness unable to drive or ride the same with safety to other persons travelling on or being upon the highway, he shall incur the penalties imposed by this Act. 18 V. c. 138, s. 4.

*Racing Prohibited.*

Racing on highways forbidden.

**5.** No person shall race with or drive furiously any horse or other animal, or shout or use any blasphemous or indecent language upon any highway. 18 V. c. 138, s. 5.

Swearing on highways forbidden.

**6.** In case any person so races or drives, or shouts or uses blasphemous or indecent language, he shall incur the penalties imposed by this Act. 18 V. c. 138, s. 5.

*Sleigh Bells.*

Sleigh horses to have bells.

**7.** Every person travelling upon any highway with a sleigh, sled or cariole, drawn by horse or mule, shall have at least two bells attached to the harness. 18 V. c. 138, s. 7.

*Bridges.*

Notice to be posted at the bridges to which this Act applies.

**8.** Every person who has the superintendence and management of any bridge exceeding thirty feet in length, shall cause to be put up at each end thereof, conspicuously placed, a notice legibly printed in the following form:

"Any person or persons riding or driving on or over this "bridge at a faster rate than a walk, will, on conviction "thereof, be subject to a fine, as provided by law." 8 V. c. 44, s. 3.

Penalty on persons defacing such notice.

**9.** In case any person injures, or in any way interferes with such notice, he shall incur a fine of not less than one nor more than eight dollars, to be recovered in the same manner as other penalties imposed by this Act. 8 V. c. 44, s. 4.

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Fast driving over bridges forbidden.

**10.** If, while such notice continues up, any person rides or drives a horse or other beast of burden over such bridge at a pace faster than a walk, he shall incur the penalties imposed by this Act. 18 V. c. 138, s. 6.

*Penalties.*

Penalty for contravening this Act.

**11.** In cases not otherwise specially provided for, if any person contravenes this Act, and such contravention be duly proved by the oath of one credible witness, before any Justice of the Peace having jurisdiction within the locality where the offence has been committed, the offender shall incur a penalty of not less than one dollar nor more than twenty dollars, in the discretion of such Justice, with costs.

To be enforced by distress,

**12.** If not paid forthwith, the penalty and costs shall be levied by distress and sale of the goods and chattels of the offender, under a warrant signed and sealed by the convicting Justice, and the overplus, if any, after deducting the penalty, and costs and charges of sale, shall be returned, on demand, to the owner of such goods and chattels.

Or by imprisonment.

**13.** In default of payment or distress, the offender shall, by warrant signed and sealed as aforesaid, be imprisoned in the common gaol for a period of not less than one day nor more than twenty days, at the discretion of the Justice, unless such fine, costs and charges be sooner paid.

Not to bar action of damages.

**14.** No such fine or imprisonment shall be a bar to the recovery of damages by the injured party before any Court of competent jurisdiction. 18 V. c. 138, s. 8.

Application of penalties.

**15.** Every fine collected under this Act shall be paid to the Chamberlain or Treasurer of the Local Municipality or place in which the offence was committed, and shall be applied to the general purposes thereof. 18 V. c. 138, s. 9.

Appeal.

**16.** Any conviction under this Act may be appealed in the manner provided in the Act respecting appeals in cases of summary convictions. 18 V. c. 138, s. 10.

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## AN ACT EXEMPTING CERTAIN VEHICLES, HORSES AND OTHER CATTLE, FROM TOLLS ON TURNPIKE ROADS.

(C. S. C., CAP. 86.)

HER MAJESTY, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Persons going to or returning from divine service exempted from toll.

**1.** All persons going to or returning from Divine Service on any Sunday or obligatory holiday, in or upon and with their own carriages, horses or other beasts of draught, and also their families, and servants being in or upon and with such carriages, horses or other beasts of draught, shall pass toll-free through every turnpike or toll-gate on any turnpike road through which they may have occasion to pass, whether such turnpike road and the tolls thereon belong to the Province, or to any local or Municipal authority, or body of Trustees, or Commissioners for local purposes, or to any incorporated or unincorporated Company, or to any other body or person. 7 V. c 14, s. 2.

Vehicles, cattle, &c., crossing roads when a farm divided by the road, exempted from toll—when.

**2.** No vehicle laden or unladen, and no horses or cattle belonging to the proprietor or occupier of any lands divided by any turnpike road, shall be liable to toll on passing through any toll-gate on such road (at whatever distance the same may be from any City or Town) for the sole purpose of going from one part of the lands of such proprietor or occupier to another part of the same; Provided such vehicle, horses or cattle do not proceed more than half a mile along such turnpike road, either in going or in returning, and for farming or domestic purposes only. 7 V. c. 14, s. 3.

Vehicles, &c. laden with manure passing from cities and towns exempt from toll.

**3.** Every vehicle laden solely with manure, brought from any City in Lower Canada, or any City or Incorporated Town in Upper Canada, and employed to carry the same into the country parts for the purposes of agriculture, and the horse or horses or other beast of draught drawing such vehicle, shall pass toll-free through every turnpike gate or toll-gate on any turnpike road within twenty miles of such City or Town, as well in going from such City or Town as in returning thereto, if then empty. 7 V. c. 14, s. 1.

This Act not to apply to bridges.

**4.** This Act shall not extend to any toll bridge, the tolls on which are vested in any party other than the Crown. 7 V. c. 14, s. 4.

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## AN ACT TO PROVIDE FOR THE MAKING OF DOUBLE TRACKS IN SNOW ROADS.

(36 Vic., Cap. 46.)

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

County councils may pass by-laws for making double tracks on roads during sleighing season.

**1.** The County Council of each County in Ontario may provide by By-law for the making of a double track, during the season of sleighing in each and every year, upon such public or leading roads within the county, whether county roads or not, as such Council may deem advisable.

Nature of tracks.

**2.** Whenever a County Council shall pass such a By-law, the double track to be made shall be so made that teams shall be able to pass without being obliged to turn out when meeting each other.

Right of road.

**3.** The right hand track shall always be that in which a team shall be required to travel; and if any person is driving his team in the wrong track, it shall be his duty to leave the same whenever he shall meet another team rightfully entitled to use such track.

Duties and powers of path-masters or road-masters.

**4.** A County Council may also provide by By-law that path-masters appointed by Township Councils shall cause the roads on which double tracks are to be made to be kept open for travel within their respective Municipalities, or in the event of there being no such path-masters available, may appoint road-masters to perform that duty; and such path-masters or road-masters shall have full power to call out persons liable to perform statute labour to assist in keeping open such roads within their respective Municipalities, and to give to such persons as may be employed in so doing, certificates of having performed statute labour to the amount of the days' work done, and such work shall be allowed for to such persons in their next season's statute labour; and such County Council may also provide for the application by such Township Council of so much of the commutation of statute labour fund as may be necessary for the keeping open such roads as aforesaid within their respective Municipalities.

If township refuse to make tracks, county may do so and impose a rate.

**5.** In the event of a Township Council neglecting or refusing to keep such roads open for travel as mentioned in the next preceding section of this Act, the County Council

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shall be entitled to do so, and to impose upon the Township so in default a rate sufficient for that purpose, and such rate shall be levied and collected in the manner provided by the Assessment Act of 1869 as to the collection of County rates.

Penalty for persons refusing to work under path-masters.

**6.** Any person liable to perform statute labour, and who refuses or neglects to turn out and work under the path-master or road-master who may warn him out for that purpose under the authority of this Act, shall be liable to a fine not exceeding twenty dollars, nor less than one dollar, over and above costs, and in case of non-payment, to imprisonment for a term not exceeding twenty-one days.

Penalty for travelling on left hand track and refusing to turn out.

**7.** Any person travelling in the wrong or left hand track, and refusing or neglecting to leave the same when met by a person who is travelling therein with his team as of right, shall be liable to a penalty of not less than one dollar, nor more than twenty dollars, over and above the costs of prosecution, and in case of non-payment, to imprisonment for a term not exceeding twenty-one days.

Interpretation of the word "team."

**8.** The word "team" shall be taken to mean a vehicle drawn by one horse or other animal, or a greater number of horses or other animals, as the case may be.

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## AN ACT TO PREVENT THE SPREADING OF CANADA THISTLES IN UPPER CANADA.

(29 Vic., Cap. 40.)

Preamble.

HER MAJESTY, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Owners of land to cut down thistles growing on their lands.

**1.** It shall be the duty of every occupant of land in Upper Canada, to cut or to cause to be cut down all the Canada thistles growing thereon, so often in each and every year as shall be sufficient to prevent them going to seed; and if any owner, possessor or occupier of land shall knowingly suffer any Canada thistles to grow thereon, and the seed to ripen so as to cause or endanger the spread thereof, he shall upon conviction be liable to a fine of not less than two nor more than ten dollars for every such offence.

Penalty.

Duty of overseers of highways under this Act.

**2.** It shall be the duty of the overseers of highways in any Municipality to see that the provisions of this Act are

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carried out within their respective highway divisions, by cutting or causing to be cut all the Canada thistles growing on the highways or road allowances within their respective divisions, and every such overseer shall give notice in writing to the owner, possessor or occupier of any land within the said division whereon Canada thistles shall be growing and in danger of going to seed, requiring him to cause the same to be cut down within five days from the service of such notice; and in case such owner, possessor or occupier shall refuse or neglect to cut down the said Canada thistles within the period aforesaid, the said overseer of highways shall enter upon the land and cause such Canada thistles to be cut down with as little damage to growing crops as may be, and he shall not be liable to be sued in action of trespass therefor: Provided that no such overseer of highways shall have power to enter upon or cut thistles on any land sown with grain: Provided also, that where such Canada thistles are growing upon non-resident lands, it shall not be necessary to give any notice before proceeding to cut down the same.

Proviso as to lands sown with grain.

Proviso as to non-resident lands.

**3.** It shall be the duty of the Clerk of any Municipality in which railway property is situated, to give notice in writing to the station master of said railway resident in or nearest to the said Municipality, requiring him to cause all the Canada thistles growing upon the property of the said railway company within the limits of the said Municipality to be cut down as provided for in the first section of this Act, and in case such station master shall refuse or neglect to have the said Canada thistles cut down within ten days from the time of service of the said notice, then the overseers of highways of the said Municipality shall enter upon the property of the said railway company and cause such Canada thistles to be cut down, and the expense incurred in carrying out the provisions of this section shall be provided for in the same manner as in the next following section of this Act.

Clerks of municipalities to warn station masters to cut down thistles on railways.

Penalty.

**4.** Each overseer of highways shall keep an accurate account of the expense incurred by him in carrying out the provisions of the preceding sections of this Act, with respect to each parcel of land entered upon therefor, and shall deliver a statement of such expenses, describing by its legal description the land entered upon, and verified by oath, to the owner, possessor or occupier of such resident lands, requiring him to pay the amount; in case such owner, possessor or occupier of such resident lands shall refuse or neglect to pay

Account of expenses to be kept by overseer.

If the owners refuse to pay.

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the same within thirty days after such application, the said claim shall be presented to the Municipal Council of the Corporation in which such expense was incurred, and the said Council is hereby authorized and required to credit and allow such claim, and order the same to be paid from the funds for general purposes of the said Municipality. The said overseer of highways shall also present to the said Council a similar statement of the expenses incurred by him in carrying out the provisions of the said section upon any non-resident lands; and the said Council is hereby authorized and empowered to audit and allow the same in like manner: Provided always, that if any owner, occupant or possessor, amenable under the provisions of this Act, shall deem such expense excessive, an appeal may be had to the said Council (if made within thirty days after delivery of such statement), and the said Council shall determine the matter in dispute.

Proviso appeal allowed.

How expenses shall be collected.

**5.** The Municipal Council of the Corporation shall cause all such sums as have been so paid under the provisions of this Act, to be severally levied on the lands described in the statement of the overseers of highways, and to be collected in the same manner as other taxes; and the same when collected shall be paid into the Treasury of the said Corporation to reimburse the outlay therefrom aforesaid.

Penalty on sale of any seed mixed with thistle seed.

**6.** Any person who shall knowingly vend any grass or other seed among which there is any seed of the Canada thistle, shall for every such offence, upon conviction, be liable to a fine of not less than two nor more than ten dollars.

Penalty on overseer neglecting his duty.

**7.** Every overseer of highways or other officer who shall refuse or neglect to discharge the duties imposed on him by this Act, shall be liable to a fine of not less than ten nor more than twenty dollars.

Recovery of penalties.

**8.** Every offence against the provisions of this Act shall be punished, and the penalty hereby enforced for each offence shall be recovered and levied, on conviction, before any Justice of the Peace; and all fines imposed shall be paid into the Treasury of the Municipality in which such conviction takes place.

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## AN ACT TO AMEND THE ACT CHAPTER FORTY, TWENTY-NINE VICTORIA, ENTITLED "AN ACT TO PREVENT THE SPREADING OF CANADA THISTLES IN UPPER CANADA."

(32 VIC., CAP. 41.)

WHEREAS it is desirable to amend the Act relating to the spread of Canada thistles in Upper Canada: Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:— Preamble.

1. Notwithstanding anything in the said Act contained, it shall not be lawful for any overseer of highways to enter upon any of the duties therein imposed, without having first obtained authority from the Municipal Corporation of which he is an officer. Overseer to have authority from council.

2. It shall be lawful for all Municipal Corporations in the Province of Ontario to authorize the carrying out of the provisions of the said Act. Municipal corporations to carry out Act.

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## AN ACT TO AMEND THE ACT IMPOSING A TAX ON DOGS AND FOR THE PROTECTION OF SHEEP.

(32 VIC., CAP. 31.)

WHEREAS it is expedient to amend the Act twenty-nine and thirty Victoria, chapter fifty-five, entitled *An Act to Amend and Consolidate the Acts to impose a Tax on Dogs, and to provide for the better Protection of Sheep in Upper Canada:* Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:— Preamble.

1. The Act passed in the twenty-ninth and thirtieth years of Her Majesty's reign, chapter fifty-five, entitled *An Act to Amend and Consolidate the Acts to impose a Tax on Dogs, and to provide for the better Protection of Sheep in Upper Canada,* is hereby repealed. 29 & 30 Vic. repealed.

2. There shall be levied annually, in every Municipality in Ontario, upon the owner of each dog therein, an annual tax of one dollar for each dog, and two dollars for each bitch: Provided, however, that in case the Council of any County Annual tax on dogs. Proviso.



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or union of Counties may deem it advisable to dispense with the levy of the said tax, it may be lawful for such Council to declare by By-law that the said tax shall not be levied in any of the Municipalities within its jurisdiction; and, immediately upon the said By-law having been passed, shall cause its Clerk to transmit a copy of the same to the assessor or assessors of every Municipality so within its jurisdiction.

Duty of assessors herein.

**3.** The assessor or assessors of every Municipality within which this Act shall not have been dispensed with, as provided in the foregoing section, shall, at the time of making their annual assessment, enter on their roll opposite the name of every person assessed, and also opposite the name of every resident inhabitant not otherwise assessed, being the owner or keeper of any dog or dogs, the number by him or her owned or kept, in a column prepared for the purpose.

Duty of owners of dogs.

Penalty.

**4.** The owner or keeper of any dog shall, when required by the assessor or assessors, deliver to him or them, in writing, the number of dogs owned or kept, whether one or more; and for every neglect or refusal to do so, and for every false statement made in respect thereof, shall incur a penalty of five dollars, to be recovered before any Justice of the Peace for the Municipality, with costs.

Tax entered on collector's roll.

**5.** The collector's roll shall contain the name of every person entered on the assessment roll as the owner or keeper of any dog or dogs, with the tax hereby imposed, in a separate column; and the collector shall proceed to collect the same, and at the same time and with the like authority, and make returns to the Treasurer of the Municipality, in the same manner, and subject to the same liability for paying over the same in all respects to the Treasurer, as in the case of other taxes levied in the Municipality.

Tax to form fund for damages, &c.

**6.** The money so collected and paid to the Clerk or Treasurer of any Municipality shall constitute a fund for satisfying such damages as may arise in any year from dogs killing or injuring sheep or lambs in such Municipality; and the residue, if any, shall form part of the assets of the Municipality for the general purposes thereof; but the fund shall be supplemented, when necessary, in any year to pay charges on the same, to the extent of the amount which may have been applied to the general purposes of the Municipality.

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Extent of liability of owner or keeper of dog.

**7.** The owner of any sheep or lamb killed or injured by any dog shall be entitled to recover the damage occasioned thereby from the owner or keeper of such dog, by summary proceedings before a Justice of the Peace, on information or complaint before such Justice, who is hereby authorized to hear and determine such complaint, and proceed thereon in the manner provided by chapter one hundred and three of the Consolidated Statutes of Canada, in respect to proceedings therein mentioned; and such aggrieved party shall be entitled so to recover, whether the owner or keeper of such dog knew or did not know that it was vicious or accustomed to worry sheep.

Provision for cases in which owner of dog not known.

**8.** The owner of any sheep or lamb killed or injured by any dog, the owner or keeper of which is not known, may, within three months, apply to the Council of the Municipality in which such sheep or lamb was so killed or injured, for compensation for the injury; and if such Council (any member of which shall be competent to administer an oath or oaths in examining parties in the premises) shall be satisfied that the aggrieved party has made diligent search and inquiry to ascertain the owner or keeper of such dog, and that such owner or keeper cannot be found, they shall award to the aggrieved party for compensation a sum not exceeding two-thirds of the amount of the damage sustained by him; and the Treasurer of such Municipality shall pay over to him the amount so awarded.

Provision for cases where there is a conviction, but distress insufficient.

**9.** In case the owner of any sheep or lamb so killed or injured shall proceed against the owner or keeper of the dog that committed the injury, before a Justice of the Peace, as provided by this Act, and shall be unable, on the conviction of the offender, to levy the amount ordered to be paid, for want of sufficient distress to levy the same, then the Council of the Municipality in which the offender resided at the time of the injury shall order their Treasurer to pay to the aggrieved party the amount ordered to be paid by the Justice under such conviction, saving and excepting the costs of the proceedings before such Justice and before the Council.

After compensation paid by municipality, claims to belong to them.

Proviso.

**10.** After the owner of such sheep or lamb shall have received from the Municipality any money under either of the preceding sections, his claim shall thenceforth belong to such Municipality; and they may enforce the same against the offending party for their own benefit, by any means or form of proceeding that the aggrieved party was entitled to

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take for that purpose: Provided always, that in case such Municipality shall recover from the offender more than they had paid to the aggrieved party, besides their costs, they shall pay over the excess to such aggrieved party for his own use.

Dogs seen worrying.

**11.** Any person may kill any dog which he may see worrying or wounding any sheep or lamb.

Dogs known to worry sheep to be killed by owner.

Penalty.

Proviso.

Proviso.

**12.** The owner or keeper of any dog, to whom notice shall be given of any injury done by his dog or dogs to any sheep or lamb, or of his dog or dogs having chased or worried any sheep or lamb, shall, within forty-eight hours after such notice, cause such dog or dogs to be killed; and for every neglect so to do, he shall forfeit a sum of two dollars and fifty cents for every such dog, and a further sum of one dollar and twenty-five cents for each such dog for every forty-eight hours thereafter, until the same be killed: Provided that it shall be proved to the satisfaction of the Justice of the Peace before whom such suit shall be brought for the recovery of such penalties, that such dog or dogs has or have worried or otherwise injured such sheep or lamb: Provided also, that no such penalties shall be enforced in case it shall appear to the satisfaction of such Justice of the Peace that it was not in the power of such owner or keeper to kill such dog or dogs.

Proceedings where collector has failed to collect taxes from parties assessed for dogs.

Penalty.

Penalty.

**13.** In cases where parties have been assessed for dogs, and the Township collector has failed to collect the taxes authorized by this Act, he shall report the same under oath to any Justice of the Peace, and such Justice shall, by an order under his hand and seal, to be served by any duly qualified constable, require such dogs to be destroyed by the owner or owners thereof; and if such owner or owners neglect or refuse to obey the said order, he or they shall be liable to the penalty, to be recovered in the same way and manner as already provided in section number seven of this Act; and in case any collector neglects to make the aforesaid report within the time required for paying over the taxes levied in the Municipality, he shall be liable to a penalty of ten dollars and costs, to be recovered in the same way and manner as already provided in section number seven of this Act.

Liability of dog owner to sheep owner where tax not imposed.

**14.** If the Council of any County or union of Counties should, as already provided by By-law, decide to dispense with the levy of the aforesaid tax in the Municipality within

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its jurisdiction, the owner of any sheep or lamb to the contrary may notwithstanding sue the owner or keeper of any dog or dogs for the damage or injury done by the said dog or dogs to the said sheep or lamb; and the same shall be recovered in the way and manner provided by section seven of this Act.

Cases where owner of sheep, &c., has no compensation.

**15.** The owner of any sheep or lamb killed or injured while running at large upon any highway or unenclosed land, shall have no claim under this Act to obtain compensation from any Municipality.

Fees and returns by Justices.

**16.** Every Justice of the Peace shall be entitled to charge such fees in cases of prosecutions or orders under this Act as it is lawful for him to do in other cases within his jurisdiction; and he shall make the returns usual in cases of conviction, and also a return in each case to the Clerk of the Municipality, whose duty it shall be to enter the same in a book to be kept for that purpose.

Provision for cases in which council maintains taxes, but does not apply proceeds thereof.

**17.** In case the Council of any County or union of Counties deems it advisable that the tax by this Act established should be maintained, but that the application of the proceeds thereof by this Act provided should be dispensed with, it shall be lawful for such Council by By-law to declare, that such application shall be dispensed with; and thereafter, during the continuance of such By-law, the clauses of this Act numbered from six to fifteen inclusive shall have no force or effect in any of the Municipalities within the jurisdiction of such Council; and the moneys collected and paid to the Clerk or Treasurer of any such Municipality, under the remaining clauses of this Act, shall be the property of such Municipality, and shall be subject to its disposition in like manner as other local taxes.

County council may repeal by-laws passed under Act.

**18.** The Council of any County or union of Counties shall have power, from time to time, to repeal any By-law passed under the authority of this Act, and to enact or re-enact any By-law authorized by this Act.

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## AN ACT CONCERNING SHERIFF'S SALES FOR TAXES.

(33 VIC., CAP. 23.)

Preamble.

WHEREAS many lands in the Province of Ontario having been liable to be assessed for taxes have been assessed and sold for taxes, and frequently in such cases the sales or the conveyances made thereon are invalid by reason of defects or irregularities caused by the public officers or the municipalities charged with the assessing, sale or conveyance; and the original owners whose lands were sold have for the period during which the land was so assessed, and since, neglected or refused to pay any taxes or to redeem the lands; And whereas also, in many cases, the purchasers at such sales, or those claiming under them, have entered into possession and continued in possession for several years and made extensive improvements on the lands, and paid the taxes charged thereon, without any steps having been taken by the original owners to question the validity of such sales; and also, in other cases, after improvement so made, those who have made the same have, after many years' occupation, been dispossessed by the original owners, or by purchasers from them, at a small and inadequate price, and it is expedient that a remedy be provided in those cases where purchasers, or those claiming under them, have gone into possession and improved, and also where the lands having continued vacant, the purchaser, or those claiming under him, have paid taxes since the sale, and it is also expedient that those claiming lands sold for taxes should assert their own rights of action or of entry or forego such rights rather than sell the same to a purchaser:

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Sales for taxes made valid if purchaser had continued occupation four years prior to 1st Nov., 1869, and improved.

1. In all cases where lands which were liable to be assessed according to the true intent and meaning of the statutes in that behalf, have, or any part thereof has, been sold and conveyed under colour of such statutes for taxes in arrear, and the tax purchaser at any such sale had prior to the first day of November, one thousand eight hundred and sixty-nine, gone into and continued in occupation of the land sold, or of any part thereof, for at least four years, and has made improvements thereon to the value of two hundred dollars, such sale shall be deemed valid, notwithstanding the taxes or the Sheriff's fees and charges for which the land

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was sold were not imposed and charged in due form as required or authorized by the said statutes or any of them, or exceeded the amount lawfully chargeable, and notwithstanding any defect in the warrant to sell, or that such warrant was issued too soon, and notwithstanding any irregularity in the notices of sale, or the advertising and publishing thereof, or in, or as to, the time and place of any such sale, or as to any adjournment of sale, and notwithstanding that there was on such lands any property that might have been distrained, and notwithstanding that the lands have been assessed against some person as resident or occupant, when they should have been assessed as non-resident lands, or were assessed as non-resident lands when they should have been assessed against the owner or occupant or both, and notwithstanding any informality or defect in the keeping of accounts of the taxes charged against such lands, or with which they were chargeable, and notwithstanding any other omissions, insufficiency, defects or irregularities whatsoever as regards the assessment or sale, or the preliminary or subsequent steps required to make such sale effectual in law; Provided that in Cities, Towns and incorporated Villages, buildings only shall be deemed improvements within this section; and that improvements commenced after the commencement and during the pendency of any suit or action at law or in equity to dispute the validity of, or set aside such sale, shall not be included in the valuation of such improvements under this section; and provided also, that where the property sold has been sub-divided into lots before such sale, occupation and improvement of any lot or lots according to such sub-division, shall only make valid the sale as to the lot or lots so occupied and improved; Provided also, that this section shall not apply in the following cases:—

In cities, towns and villages, buildings only deemed improvements.

Improvements begun after action brought not within the Act.

Provision when land sold was sub-divided.

(1.) If the taxes for non-payment whereof the lands were sold had been fully paid before the sale.

Sale not made valid if taxes paid before sale;

(2.) If within the period limited by law for redemption, the amount paid by the purchaser, with all interest payable thereon, had been paid or tendered to the person entitled to receive such payment, with a view to redemption of the lands.

if land were redeemed;

(3.) Where, on the ground of fraud or evil practice by the purchaser at any such sale, a Court of Equity would grant relief. In any case, however, wherein the sale or conveyance would be made valid by this Act but for the provisions

in cases of fraud;

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of this sub-section, it shall not be considered in such Court that the legal estate did not pass by such sale or conveyance so as to preclude any one claiming under such purchaser from insisting on his having acquired the same, whenever it shall be requisite for his case or defence that he should have acquired the same.

if the purchaser has been ejected.

(4.) Where the possession has been actually changed under process of law or otherwise, adversely to the tax purchaser, in favour of the original owner, who has, since the change, had continued possession.

Sales made valid in cases of vacant lands if the purchaser has paid eight years' taxes and the owner not occupied.

**2.** The first section (subject to the exceptions in the sub-sections thereof) shall apply also to make the sale valid in those cases in which the tax purchaser shall not have occupied the land, or any part thereof, or, having occupied, shall not have occupied for the four years mentioned in the first section, or shall not have made improvements thereon to the value mentioned in such section; Provided the tax purchaser has since the sale, and prior to the first day of November, one thousand eight hundred and sixty-nine, paid at least eight years' taxes charged on the said lands; and provided that the owner has not occupied the land or some part thereof for one year between the sale by the Sheriff and the said first day of November.

Sales made valid though no return by Surveyor-General, if purchaser has improved and

**3.** The first section (subject to the exceptions in the sub-sections thereof) shall apply also to make a sale valid in those cases wherein any lands have been sold and conveyed under colour of any statute providing for sale of lands for taxes in arrear, and the tax purchaser has gone into, and continued in, occupation of the lands sold, or of some part thereof, for at least four years prior to the said first day of November, in the year of our Lord one thousand eight hundred and sixty-nine, and has made improvements thereon to the value of two hundred dollars, notwithstanding that the land sold was not included in any return of lands described for patent, or as having been granted, which, under any statute regarding assessment of lands, should have been made by the Surveyor-General; Provided the patent granting such lands had been issued, and the land was occupied by the grantee, or by some person through or under whom he claimed, at least two years before the sale.

if patent issued and patentee occupied two years before sale.

Costs in actions pending;

**4.** In all cases where proceedings are now pending at law or in equity, wherein the validity of any sale or conveyance on sale for taxes may come into question, and wherein such

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sale or conveyance, being invalid, is made valid by this Act, it shall be competent to any person to carry on such proceedings and recover his costs, if entitled thereto, in the same manner, so far as regards his right to costs, as if this Act had not been passed; Provided that it shall be competent to any party to such proceedings at any time to procure taxation of such costs, and on payment thereof before further costs after taxation are incurred, such proceedings shall cease; and if the amount taxed be tendered to the proper person before further costs are incurred, and he refuse to accept it, and the proceedings be continued, then if the Judge before whom the same shall be tried or determined, or the taxing officer, shall be of opinion that the carrying on such proceedings subsequent to such tender was unnecessary, he shall disallow to the party carrying on the proceedings the costs of such subsequent proceedings, and may, if and as he see fit, allow costs of such subsequent proceedings against him. In any case, also, of refusal to accept the costs so taxed, the party having tendered the same may apply to the Court wherein such proceedings are pending, or any Judge in Chambers, that the proceedings may be stayed, and such Court or Judge, on hearing the parties on affidavit or otherwise, may make such rule or order thereon, on such terms and conditions as to payment of costs of the proceedings subsequent to the tender, and of the application, and otherwise, as to such Court or Judge seem fit.

taxation, payment, and tender thereof;

disallowance of subsequent costs.

Application to stay proceedings.

**5.** In all cases where lands have been validly sold for taxes, or where the sale is made valid by this Act, then the conveyance by the Sheriff who made the sale, or his successors in office, shall not be invalid by reason of the statute under the authority whereof such sale was made having been repealed at and before the time of such conveyance, or by reason of the Sheriff who made the sale having gone out of office.

Certain sheriff's deeds not to be invalid, if the sale is valid.

**6.** In all cases where lands have been, or hereafter may be, sold for arrears of taxes, whether such sale be or be not valid, then so far as regards rights of entry adverse to any *bona fide* claim or right, whether valid or invalid, derived mediately or immediately under such sale, the fifth section of the Consolidated Statutes of Upper Canada, chapter ninety, shall not apply, to the end and intent that hereafter in such cases the right or title of persons claiming or to claim adversely to any such sale shall not be conveyed where any

Rights of entry adverse to tax-purchaser in possession not to be conveyed.

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person is in occupation adversely to such right or title, and that in such cases the Common Law and the second, fourth and sixth sections of the statute passed in the thirty-second year of the reign of King Henry the Eighth, chapter nine, be revived, and the same are hereby revived.

Common Law and 32 H. 8, ch. 9, revived.

The Act not to apply where the owner has occupied since sale.

**7.** Nothing in this Act contained shall affect the right or title of the owner of any lands sold as for arrears of taxes, or of any person claiming through or under him, where such owner at the time of such sale was in occupation of the lands, and the same have since been in the occupation of such owner, or of those claiming through or under him.

Other Acts remedial to purchasers continued.

**8.** Nothing in this Act contained shall prejudice the right or title which any purchaser at any sale for taxes, or any one claiming through or under him, shall have acquired, or hereafter may acquire, under any statute in force prior to the passing hereof.

Where sale or conveyance void for uncertainty, and purchaser has improved the value of the land and improvements, &c., to be assessed, and

**9.** In all cases (not being within any of the exceptions and provisions of any of the four sub-sections to section one) where lands having been legally liable to be assessed for taxes, have been heretofore, or may be hereafter, sold as for arrears of taxes, and such sale or the conveyance consequent thereon is invalid by reason of uncertain or insufficient designation or description of the lands assessed, sold or conveyed, and the right or title of the tax purchaser is not or does not become valid by this or any other Act, and the tax purchaser has entered, or hereafter may enter, on the lands so liable to assessment or any part thereof, and has improved or hereafter may improve the same, then, in case an action of ejectment be brought against such tax purchaser and he be liable to be ejected by reason of the invalidity of such sale or conveyance, the Judge of Assize before whom such action is tried shall direct the jury to assess, or shall himself (if the case be tried without a jury) assess, damages for the defendant for the amount of the purchase money at such sale, and interest thereon, and of all taxes paid in respect of the lands since the sale by the tax purchaser, and interest thereon, and of any loss to be sustained in consequence of any improvements made before the commencement of such action by the defendant, and all through or under whom he claims, less all just allowances for the net value of any timber sold off the lands, and all other just allowances to the claimant, and assess the value of the land to be recovered; and if a verdict be found for the claimant, no Writ of

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Possession shall issue until such claimant has paid into Court for the defendant the amount of such damages; Provided always, that if the defendant desires to retain the land, he may retain it on paying into Court on or before the fourth day of the ensuing term, or on or before any subsequent day to be appointed by the Court, the value of the land as assessed by the jury; after which payment no Writ of Possession shall issue, but the claimant, on filing in Court for the defendant a sufficient release and conveyance to the defendant of his right and title to the land in question, shall be entitled to the money so paid in.

the claimant to pay for improvements, &c., unless tax purchaser elect to retain the land on paying its value.

**10.** In any of the cases named in the ninth section, wherein the claimant shall not be tenant in fee simple or fee tail, the payment into Court to be made as aforesaid, of the value of the land; by the defendant desiring to retain the land, shall be into the Court of Chancery, and the claimant and all parties entitled to and interested in the said lands, as against the purchase at such sale for taxes, on filing in the Court of Chancery a sufficient release and conveyance to the defendant of their respective rights and interests to the land, shall be entitled to the money so paid in, in such proportions and shares as to the Court of Chancery, regarding the interests of the various parties, shall seem proper: Provided also, that in any of such cases wherein the defendant shall not be tenant in fee simple or fee tail, then the payment of damages into Court to be made as aforesaid by the claimant shall be into the Court of Chancery; and if the defendant do not pay into the Court wherein such action is brought the value of the land assessed as aforesaid, on or before the fourth day of the said term, or on or before such subsequent day as may be appointed by the Court, then any other person interested in the lands under the sale or conveyance for taxes, may, before the end of the said term, or before the expiry of ninety days from any subsequent day to be appointed by the Court for payment by the defendant, pay into Court the said value of the lands; and till expiration of the time within which such payment may be made, and after such payment, no Writ of Possession shall issue; and the defendant or other person so paying in shall be entitled, as against all others interested in the lands under the sale or conveyance for taxes, to a lien on the lands for such amount as may exceed the proportionate value of his interest in the lands, enforceable in such manner and in such shares and proportions as to the Court of Chancery, regard-

When the owner is not tenant in fee, the value of the land to be paid into Chancery

When the defendant is not tenant in fee, the value of improvements, &c., to be paid into Chancery.

The payer to have a lien for such proportion as exceeds his interest.

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ing the interests of the various parties, and on hearing the parties, seem fit. And in case the defendant or any other person interested pay into Court in manner aforesaid, the claimant shall be entitled to the amount so paid in, on filing in Court a sufficient release and conveyance to the party so paying in of all his right and title to the lands, in which release and conveyance it shall be expressed that the same is in trust for such party, to secure his lien as aforesaid. And if the said value of the lands be not paid into Court as above provided, then the amount of the damages paid into the Court of Chancery shall be paid out to the various persons who, if the sale for taxes were valid, would be entitled to the lands, in such shares and proportions as to the Court of Chancery, regarding the interests of the various parties, shall seem fit.

How the owner can obtain the value of the land paid in.

How the value of improvements, &c., paid in can be obtained.

Provision as to costs in cases within sec. 10, when value of the land and improvements, &c., only in question.

**11.** In all cases in which both the claimant (if his title were good) would be entitled in fee simple or fee tail, and the defendant (if his title were good) would be also so entitled, wherein the jury, or the Judge if there be no jury, before whom any action of ejectment may be tried, assess damages for the defendant as provided in the next preceding sections, and when it satisfactorily appears that the defendant does not contest the claimant's action for any other purpose than to retain the land on paying the value thereof, or obtain damages, the Judge before whom such action is tried, shall certify such fact upon the record, and thereupon the defendant shall be entitled to the costs of the defence, in the same manner as if the claimant had been non-suited on the trial, or a verdict had been rendered for the defendant; provided the defendant, at the time of appearing, gave notice in writing to the claimant in such ejectment, or to his attorney named on the writ, of the amount claimed, and that on payment of such amount the defendant or person in possession would surrender the possession to such claimant; or that he desired to retain the land, and was ready and willing to pay into Court a sum mentioned in the said notice as the value of the land, and that the said defendant did not intend at the trial to contest the title of the claimant: and if on the trial it be found that such notice was not given as aforesaid, or if the Judge or jury assess for the defendant a less amount than that claimed in the notice, or find that the defendant had refused to surrender possession of the land after tender made of the amount claimed, or (where the defendant has given notice of his intention to retain the said land) that

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the value of the land is greater than the amount mentioned in the said notice, or that he has omitted to pay into Court the amount mentioned in the said notice for thirty days after the claimant has given to the defendant a written notice that he did not intend to contest the value of the land mentioned in such notice, then in any such case the Judge shall not certify, and the defendant shall not be entitled to the costs of the defence, but shall pay costs to the claimant; and upon the trial of any cause after such notice no evidence shall be required to be produced in proof of the title of the claimant.

Contracts between tax purchaser and original owner continued.

**12.** No valid contract entered into between any tax purchaser and original owner, in regard to any lands sold or assumed to have been sold for arrears of taxes, as to purchase, lease, or otherwise, shall be annulled or interfered with by this Act, but such contract shall remain in force, and all consequences thereof, at law or in equity, as to admission of title or otherwise, as if this Act had not been passed.

Tax purchaser without a remedy whose title is invalid, to have a lien on the land for purchase money, &c.

**13.** In any case in which the title of the tax purchaser is not valid, or is not made valid by this Act, or in which no remedy is otherwise provided by this Act, the tax purchaser shall have a lien on the lands for the purchase money paid at such sale, and interest thereon at the rate of ten per centum per annum, and for the amount of all taxes paid by him or them since such sale and interest thereon at the rate aforesaid, to be enforced against the lands in such proportions as regards the various owners, and in such manner as the Court of Chancery think proper.

Construction of certain terms used in this Act.

**14.** In the construction of this Act, occupation by a tenant shall be deemed the occupation of the reversioner; and the words "tax purchaser" shall apply to any person who purchased heretofore at any sale under colour of any statute authorizing sales of lands for taxes in arrear, and include and extend to all persons claiming through or under him; and the words "original owner" shall include and extend to any person who, at the time of such sale, was legally interested in or entitled to the land sold, or assumed to be sold, and all persons claiming through or under him.

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## AN ACT TO MAKE VALID CERTAIN SALES OF LAND FOR TAXES, IN JUNIOR COUNTIES, AND IN TOWNS NOT SEPARATED FROM COUNTIES.

(37 VIC., CAP. 15.)

Preamble.

WHEREAS in various Towns not separated from the jurisdiction of the Counties in which they are situated, proceedings have been taken for the collection of taxes under the provisions of the "Assessment Act of Upper Canada," instead of under the "Assessment Act of 1869," and in consequence thereof, sales of lands for arrears of taxes have been made by the Treasurers of the Counties instead of by the Treasurers of the Towns: And whereas, after the separation of Counties previously united, proceedings in respect of arrears of taxes due upon lands in the former junior County have, in various cases, been taken in the senior County, and sales have been made by the officers of the senior County: And whereas, by reason of the irregularities aforesaid, the validity of the said sales may be questioned, and it is expedient to make valid the said sales and other proceedings to the extent hereinafter declared:

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Conveyances on sales for taxes in towns not separated, and in junior counties, made valid in certain cases.

**1.** Where any land situated in a Town not withdrawn from the County in which it is situated, has been heretofore sold for arrears of taxes, and a deed therefor has been, or shall be hereafter, executed by the Treasurer and Warden of the County in which the Town is situated; or where any land situate in a junior County has been heretofore sold for arrears of taxes at a sale conducted in the senior County, after the separation of such Counties, and a deed therefor has been, or shall be hereafter, executed by the Warden and Treasurer of the senior County, every deed so executed shall be, to all intents and purposes, valid and binding, except as against the Crown, if the same has not been questioned before some Court of competent jurisdiction by some person interested in the land so sold, within two years after the passing of this Act.

Certain sales made valid where no conveyance made unless land redeemed.

**2.** Where a sale has been made under the circumstances in the first section of this Act set forth, and a deed to the purchaser has not been executed, and if within one year from the day of the sale, exclusive of that day, the owner or some other person has not redeemed the land by paying or ten-

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dering to the Treasurer of the County, for the use and benefit of the purchaser or his legal representatives, the sum paid by him, together with ten per centum thereon, then in such case, on the demand of the purchaser or his assigns, or other legal representative at any time afterwards, and on payment of one dollar, the Treasurer of the County in which the sale took place shall prepare, and with the Warden of such County execute and deliver to him or them a deed in duplicate of the land so sold.

Past and pending actions provided for.

**3.** Nothing herein contained shall affect any action or suit heretofore brought in any Court of Law or Equity, or make valid any deed the validity of which is or has been questioned in any such action or suit; or aid in the construction of the said Assessment Act of 1869 in any question arising in any such action or suit.

This Act not to aid the Assessment Act of 1869.

33 V., c. 23, ss. 9, 10, 11, 13, to apply to the sales named in this Act.

**4.** The provisions of sections nine, ten, eleven and thirteen of the Act passed in the thirty-third year of the reign of Her Majesty, and chaptered twenty-three, shall apply to the sales hereinbefore mentioned, as if such sales had been among those enumerated in the said ninth section.

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## AN ACT TO AUTHORIZE THE INVESTMENT OF CERTAIN MONEYS IN DEBENTURES TO BE ISSUED FOR THE CONSTRUCTION OF DRAINAGE WORKS BY MUNICIPALITIES.

(36 VIC., CAP. 39.)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

35 Vic. c. 20 repealed.

**1.** The Act passed in the thirty-fifth year of the reign of Her Majesty, chaptered twenty-six, intituled "An Act to provide for the construction of Drainage Works, and to authorize the investment of certain moneys in debentures to be issued for the construction of such works," is hereby repealed, and the following substituted therefor.

Municipal Councils may pass By-laws

**2.** In case the majority in number of the owners as shown by the last revised assessment roll to be resident on the property to be benefited in any part of any Municipality, do petition the Council for the deepening of any stream, creek or water-course, or for draining of the property (describing it), the Council may procure an examination to

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be made by an engineer, or provincial land surveyor, of the stream, creek or water-course proposed to be deepened, or of the locality proposed to be drained, and may procure plans and estimates to be made of the work by such engineer or provincial land surveyor, and an assessment to be made by such engineer or surveyor of the real property to be benefited by such deepening or drainage, stating as nearly as may be, in the opinion of such engineer or provincial land surveyor, the proportion of benefit to be derived by such deepening or drainage by every road and lot, or portion of lot: and if the Council be of opinion that the deepening of such stream, creek or water-course, or the draining of the locality described, or a portion thereof, would be desirable, the Council may pass by-laws in form or to the effect set forth in Schedule A to this Act,—

for deepening streams and drainage,

(1.) For providing for the deepening of the stream, creek or water-course, or the draining of the locality;

for borrowing requisite funds,

(2.) For borrowing, on the credit of the Municipality, the funds necessary for the work, and for issuing the debentures of the Municipality to the requisite amount, in sums of not less than one hundred dollars each, and payable within fifteen years from date, with interest at a rate of not less than five per centum per annum;

for levying rate for payment

(3.) For assessing and levying in the same manner as taxes are levied, upon the real property to be benefited by the deepening or draining, a special rate sufficient for the payment of principal and interest of the debentures, and for so assessing and levying the same, as other taxes are levied, by an assessment and rate on the real property so benefited, (including roads held by joint stock companies or private individuals,) as nearly as may be to the benefit derived by each lot or portion of lot and road in the locality: Provided always, that any person whose property has been assessed for such deepening or drainage may pay the amount of such assessment, less the interest, at any time before the debentures are issued, in which case the amount of debentures shall be proportionally reduced; And provided further, that any agreement on the part of any tenant to pay the rates or taxes of the demised property shall not apply to or include the charges or assessments for draining under this Act, unless such agreement shall in express terms mention or refer to such charges or assessments, and as payable in respect of drainage works; but in cases of contracts of purchase, or of leases giving the lessee a right of purchase, the

Landlord and tenant.

Right of purchase.

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said charges or assessments shall be added to the price, and shall be paid (as the case may be) by the purchaser, or by the lessee in case he exercises such right of purchase;

For providing how assessment be paid.

(4.) For regulating the times and manner in which the assessment shall be paid;

For ascertaining the property liable to the rate.

(5.) For determining what real property will be benefited by the deepening or draining, and the proportion in which the assessment should be made on the various portions of land so benefited, and subject in every case of complaint, by the owner or person interested in any property assessed, whether of overcharge, or of undercharge of any other property assessed, or that property that should be assessed has been wrongfully omitted to be assessed, to proceedings for trial of such complaint, and appeal therefrom, in like manner as nearly as may be as on proceedings for the trial of complaints, as set forth in the sixtieth, sixty-first, sixty-third, sixty-fifth, sixty-sixth, sixty-seventh, sixty-eighth, sixty-ninth and seventieth sections of "The Assessment Act of 1869."

Court of Appeal.

**3.** Trial of such complaints shall be had in the first instance by and before a Court of Revision, which the Council shall, from time to time, as occasion may require, hold on some day not earlier than twenty nor later than thirty days from the day on which the By-law shall be first published, notice of which shall be published with the By-law during the four weeks of its publication; and such Court shall be constituted and have the powers referred to in sections numbered from fifty-one to fifty-eight, both inclusive, of the said Act; and in case of appeal to the Judge, junior or acting Judge of the County Court, he shall have the same powers and duties, and the clerks of the Municipality and Division Court respectively shall have the same powers and duties, as nearly as may be, as contained in sections numbered from sixty-three to seventy, both inclusive, of the said Act.

Appeal to County Judge.

Notice before passing of by-law.

**4.** Before the final passing of the By-law, it shall be published once or oftener in every week for four weeks, in some newspaper in the Municipality, or if no newspaper be published therein, then in some newspaper published in the nearest Municipality in which a newspaper is published, and also notices in at least four public places within such Municipality, together with a notice that any one intending to apply to have such By-law, or any part thereof, quashed,



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must, within ten days after the passing thereof, serve a notice in writing upon the Reeve or other head officer, and upon the Clerk of the Municipality, of his intention to make application for that purpose to one of Her Majesty's superior Courts of Law at Toronto, during the term next ensuing the final passing of the By-law.

By law to be valid though informal, if not quashed.

**5.** In case no such notice of intention to make application to quash a By-law be served within the time limited for that purpose in the fourth section of this Act, the By-law shall, notwithstanding any want of substance or form either in the By-law itself, or in the time or manner of passing the same, be a valid By-law.

When work may be extended into other municipalities.

**6.** Whenever it is necessary to continue the deepening or drainage aforesaid beyond the limits of any Municipality, the engineer or surveyor employed by the Council of such Municipality may continue the survey and levels into the adjoining Municipality, until he finds fall enough to carry the water beyond the limits of the Municipality in which the deepening or drainage was commenced.

When lands in an adjoining municipality may be charged, though works not carried into such municipality.

**7.** When the deepening and drainage do not extend beyond the limits of the Municipality in which they are commenced, but, in the opinion of the engineer or surveyor aforesaid, benefit lands in an adjoining Municipality, or greatly improve any road lying within any Municipality, or between two or more Municipalities, then the engineer or surveyor aforesaid shall charge the lands to be so benefited, and the Corporation or Corporations or Company whose road or roads are improved, with such proportion of the costs of the works as he may deem just; and the amount so charged for roads, or agreed upon by the arbitrators, shall be paid out of the general funds of such Municipality or Company.

Report as to which municipality shall pay.

**8.** The engineer or surveyor aforesaid shall determine and report to the Council by which he was employed, whether the deepening or drainage shall be constructed and maintained solely at the expense of such Municipality, or whether it shall be constructed and maintained at the expense of both Municipalities, and in what proportion.

Plans, &c.

**9.** The engineer or surveyor aforesaid, when necessary, shall make plans and specifications of the deepening or drainage to be constructed, and charge the lands to be benefited by the work as provided herein.

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Council of municipality wherein work begun to notify municipality to be benefited.

**10.** The Council of the Municipality in which the deepening or drainage is to be commenced, shall serve the head of the Council of the Municipality into which the same is to be continued, or whose lands or roads are to be benefited without the deepening or drainage being continued, with a copy of the report, plans and specifications of the engineer or surveyor aforesaid, when necessary, so far as they affect such last mentioned Municipality; and unless the same is appealed from as hereinafter provided, it shall be binding on the Council of such Municipality.

Council of municipality wherein work not begun, to pass by-law.

**11.** The Council of such last mentioned Municipality shall, within four months from the delivery to the head of the Corporation of the report of the engineer or surveyor, as provided in the next preceding section, pass a By-law in the same manner as if a majority of the owners resident on the lands to be taxed had petitioned, as provided in the first section of this Act, to raise such sum as may be named in the report, or in case of an appeal, for such sum as may be determined by the arbitrators.

Council of municipality wherein work not begun may appeal: arbitration thereon.

**12.** The Council of the Municipality into which the deepening or drainage is to be continued, or whose lands, road or roads are to be benefited without the deepening or drainage being carried within its limits, may, within twenty days from the day in which the report was served on the head of the Municipality, appeal therefrom; in which case they shall serve the head of the Corporation from which they received the report with a written notice of appeal such notice shall state the ground of appeal, the name of an engineer or other person as their arbitrator, and calling upon such Corporation to appoint an arbitrator in the matter on their behalf, within ten days after the service of such notice; and in default thereof it shall be lawful for the Council of the Municipality appealing therefrom to appoint such second arbitrator, and the two arbitrators so appointed shall forthwith appoint a third arbitrator in the matter: Provided always, that in no case shall the engineer or surveyor aforesaid, employed to make surveys, plans and specifications, or a member or officer of any Council concerned, be appointed or act as arbitrator.

Appointment of third arbitrator by County Judge.

**13.** If, after the arbitrators have been appointed as aforesaid, they fail or neglect for the space of six days to appoint a third arbitrator, the Judge of the County Court of the County in which the Municipality appealing is

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situated shall, within four days after a request in writing made upon him by either of the two arbitrators appointed as above, appoint a third arbitrator.

Oath by arbitrators.

**14.** Each arbitrator, before proceeding to try the matter of the arbitration, shall take and subscribe the following oath (or in case of those who affirm, make and subscribe the following affirmation) before any Justice of the Peace; which oath or affirmation shall be filed with the award:

"I, *A. B.*, do swear (or affirm) that I will well and truly try the matter referred to me by the parties, and a true and impartial award make in the premises according to the evidence and my skill and knowledge. So help me God."

Award.

**15.** The arbitrators shall, within ten days after the appointment of the third arbitrator, meet at such place as they may agree upon, and shall then hear and determine the matter in dispute, and make their award in triplicate, which shall be binding on all parties; and one copy thereof shall be filed with the Clerk of each of the Municipalities interested, and one shall be filed with the Registrar of Deeds for the County in which either of the Municipalities is situate.

Decision of majority of arbitrators.

**16.** In case of difference between the arbitrators, the decision of any two of them shall be conclusive.

Repairs and maintenance of work after completion.

**17.** After such deepening or drainage is fully made and completed, it shall be the duty of each Municipality, in the proportion determined by the engineer or arbitrators (as the case may be), or until otherwise determined by the engineer or arbitrators, under the same formalities, as near as may be, as provided in the preceding sections, to preserve, maintain and keep in repair the same within its own limits, either at the expense of the Municipality or parties more immediately interested, or at the joint expense of such parties and the Municipality, as to the Council, upon the report of the engineer or surveyor, may seem just; and any such Municipality neglecting or refusing so to do, upon reasonable notice in writing being given by any party interested therein, shall be compelled, by *mandamus* to be issued from any Court of competent jurisdiction, to make, from time to time, the necessary repairs to preserve and maintain the same; and shall be liable to pecuniary damage to any person who or whose property shall be injuriously affected by reason of such neglect or refusal; and in any case wherein, after such deepening or drainage

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is fully made and completed, the same has not been continued into any other Municipality than that in which the same was commenced, or wherein the lands or roads of any such other Municipality are not benefited by such deepening or drainage, it shall be the duty of the Municipality making such deepening and drainage to preserve, maintain and keep in repair the same at the expense of the lots, parts of lots and roads, as the case may be, as agreed upon and shown in the award or By-law as finally passed: Provided always, that the Council may from time to time change such assessment on the report of an engineer or surveyor appointed by them to examine and report on such drain deepening and repairs.

Case of a drain being used by another municipality.

**18.** Should a drain already constructed, or hereafter constructed by a Municipality, be used as an outlet, or otherwise, by another Municipality, Company or individual, such Municipality, Company or individual using the same as an outlet or otherwise, may be assessed for the construction and maintenance thereof in such proportion and amount as shall be ascertained by the engineer, surveyor or arbitrators, under the formalities provided in the preceding sections.

Deposit with commissioner of public works of copies of plans, &c.

**19.** Any Township Municipality proposing to undertake works under the provisions of this Act may, after the expiration of the time limited for serving notice of intention to make application to quash the By-law, deposit with the Commissioner of Public Works authenticated copies of the plans (if deemed necessary by the Commissioner), specifications and estimates of the works and of the By-law; and may apply for the sale of the debentures authorized thereby, such application to be in writing sealed with the seal of the Municipality, and signed by the Reeve or other head officer thereof, and to be accompanied by two affidavits, one to be made by the said Reeve or other head officer, in form or to the effect set forth in Schedule B to this Act, and the other to be made by the Clerk of the Municipality, in form or to the effect set forth in Schedule C to this Act; said affidavits to be sworn before any Justice of the Peace.

Commissioner of public works to report as to investment.

**20.** The Commissioner of Public Works shall investigate and report to the Lieutenant-Governor in Council as to the propriety of the investments proposed in such applications, in the order of time in which they are deposited; and such reports shall be disposed of by the Lieutenant-Governor in Council in the order of time in which the same are made.

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Purchase out of cons. rev. fund of debentures.

**21.** The Lieutenant-Governor in Council may from time to time in his discretion invest any surplus of the Consolidated Revenue Fund, not exceeding in the whole at any one time the sum of two hundred thousand dollars, in the purchase of any debentures issued under any By-law so deposited as aforesaid, in respect of which the Commissioner of Public Works shall certify to the propriety of the investment.

Percentage to be advanced on debentures.

**22.** On any such investment not more than eighty-five per centum of the par value of the debentures shall be advanced until after the Commissioner of Public Works has reported that the works have been inspected and are completed; and any expenses in connection with the investigation and inspection made under this Act shall be deducted from the amount retained.

When debentures unquestionable.

**23.** After any such investment has been made, the debentures shall not be questioned, and shall be deemed to be valid to all intents and purposes.

When the Commissioner shall not report propriety of investment.

**24.** The Commissioner of Public Works shall not certify to the propriety of the investment in any case in which the aggregate amount of the rates necessary for the payment of the current annual expenses of the Municipality, and the interest and principal of the debts contracted by the Municipality, shall exceed the aggregate value of three cents in the dollar on the whole value of the ratable property within its jurisdiction, or in any case in which the debentures to be issued under the By-law shall exceed twenty-thousand dollars.

Amount payable under by-law to be remitted to treasurer of Ontario.

**25.** The amount payable in any year under any such By-law or debentures, for principal and interest, shall be remitted by the Treasurer to the Treasurer of Ontario within the space of one month after the same shall have become exigible, together with interest at the rate of seven per centum per annum, during the time of default in payment; and in case of the continuance of such default, the

Consequences of neglect.

Council of the Municipality shall in the next ensuing year assess and levy on the whole ratable property within its jurisdiction, in the same manner in which taxes are levied for the general purposes of the Municipality, a sufficient sum to enable the Treasurer, over and above the other valid debts of the Corporation falling due within the year, to pay over to the Treasurer of Ontario the amount in arrear, together with the interest thereon at the rate of seven per centum per annum, during the time of default in payment,

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whether the same may have been previously recovered from the parties or lands chargeable under the By-law with the same or not; and the amount so in arrear and interest shall be the first charge upon all the funds of the Municipality, for whatever purpose or under whatever By-law they may have been raised; and no Treasurer or other officer of the Municipality shall, after such default, pay any sum whatsoever, except for the ordinary current disbursements, and salaries of clerks and other employees of such Municipality, out of any funds of the Municipality in his hands, until the amount so in arrear and interest shall have been paid to the Treasurer of Ontario; and if any such Treasurer or Municipal officer shall pay any sum out of the funds of his Municipality, except as aforesaid, contrary to the provision hereinbefore made, he shall be deemed guilty of a misdemeanor, and shall, moreover, be liable to the Treasurer of Ontario for every sum so paid, as for money received by him for the Crown; and any Reeve or Councillor wilfully or negligently omitting to see the foregoing provisions carried into effect shall also be personally and individually liable to the Treasurer of Ontario for the full amount so in arrear and interest, to be recovered with costs by the said Treasurer of Ontario, in any suit as for money had and received for Her Majesty's behoof: Provided always, that no assessment, levy or payment made under this section shall in anywise exonerate the persons or lands chargeable under the By-law from liability to the Municipality.

Duty and liability of municipal treasurer after default.

Liability of reeves and councillors.

**26.** Any valid By-law in regard to drainage passed between the second day of March, in the year of our Lord one thousand eight hundred and seventy-two, and the date of the passing of this Act, under the Act passed in the thirty-second year of the reign of Her Majesty, and chaptered forty-three, intituled "An Act to amend the Municipal Institutions Act of Upper Canada," shall, so far as regards the investment of any surplus of the Consolidated Revenue Fund in the purchase of debentures issued under such By-law, stand upon the same footing as if such By-law had been passed and such debentures had been issued under the Act hereby repealed.

Act to apply to former by-laws.

**27.** Should any dispute arise between individuals, or between individuals and a Municipality or Company, or between a Company and a Municipality, or between Municipalities, as to damages alleged to have been done to the

Disputes as to damages to be referred to arbitration.

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property of any Municipality, individual, or Company, in the construction of drainage works, or consequent thereon; then the Municipality, Company, or individual complaining shall refer the matter to arbitration, as provided in this Act; and the award so made shall be binding on all parties.

Continuing under-drains across adjoining lots or highways.

**28.** In case any person should find it necessary to continue an under-drain into an adjoining lot or lots, or across or along any public highway, for the purpose of an outlet thereto, and in case the owner of such adjoining lot or lots, or the Council of the Municipality, refuse to continue such drain to an outlet, or to join in the cost of the continuation of such drain; then the firstly mentioned person shall be at liberty to continue his said drain to an outlet through such adjoining lot or lots, or across or along such highway; and in case of any dispute as to the proportion of cost to be borne by the owner of such adjoining lot, or Municipality, the same shall be determined by the fence viewers in the same manner as disputes within the Fence Viewers' Act, and their award shall be final.

Short title.

**29.** This Act may be cited as the "Municipal Drainage Aid Act."

## SCHEDULE "A."

(*Section 2.*)

### Form of By-Law.

A By-law to provide for draining parts of (*or* for the deepening of in, *as the case may be*) the Township of and for borrowing on the credit of the Municipality the sum of for completing the same

Provisionally adopted the day of , A.D.

Whereas a majority in number of the owners, as shown by the last revised assessment roll to be resident on the property hereinafter set forth, to be benefited by the drainage (*or* deepening, *as the case may be*), have petitioned the Council of the said Township of , praying that (*here set out the purport of the petition, describing generally the property to be benefited*).

And whereas, thereupon the said Council procured an examination to be made by , being a person competent for such purpose, of the said locality proposed to be

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drained (*or* the said stream, creek or water-course proposed to be deepened, *as the case may be*), and has also procured plans and estimates of the work to be made by the said , and an assessment to be made by him of the real property to be benefited by such drainage (*or* deepening, *as the case may be*), stating as nearly as he can the proportion of benefit which, in his opinion, will be derived in consequence of such drainage (*or* deepening, *as the case may be*), by every road and lot or portion of lot, the said assessment so made, and the report of the said in respect thereof, and of the said drainage (*or* deepening *as the case may be*), being as follows: (*here set out the report and assessment of the engineer or other person employed*).

And whereas the said Council are of opinion that the draining of the locality described (*or* the deepening of such stream, creek or water-course, *as the case may be*) is desirable:

Be it therefore enacted by the said Municipal Council of the said Township of , pursuant to the provisions of an Act of the Legislature of Ontario, passed in the thirty-sixth year of Her Majesty's reign, chaptered.

1st. That the said report, plans and estimates be adopted, and the said drain (*or* deepening, *as the case may be*) and the works connected therewith be made and constructed in accordance therewith.

2nd. That the Reeve of the said Township may borrow on the credit of the Corporation of the said Township of the sum of , being the funds necessary for the work, and may issue debentures of the Corporation to that amount, in sums of not less than one hundred dollars each, and payable within years from the date thereof, with interest at the rate of per centum per annum, that is to say, in (*insert the manner of payment, whether in equal annual payments or otherwise*), such debentures to be payable at , and to have attached to them coupons for the payment of interest.

3rd. That the following special rates, over and above all other rates, shall be assessed and levied (in the same manner and at the same time as taxes are levied) upon the undermentioned lands, being the lands so to be benefited as aforesaid, and shall be paid at the times and in the manner also undermentioned (*here set out the lots and portions of*

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*lots, and roads, with the amounts assessed*), in manner following, or to that effect :—

| Concession. | | Lot. | Acres. | $ c. |
|---|---|---|---|---|
| 9 | | 5 | 200 | 75 00 |
| 9 | S. ½, | 6 | 100 | 50 00 |
| 9 | N. ¼, | 6 | 50 | 30 00 |
| 10 | S.W. ¼, | 8 | 100 | 80 00 |
| 10 | | 9 | 200 | 150 00 |
| 10 | S. ½ and N. ¼, | 10 | 150 | 90 00 |
| Chargeable to Municipality for roads— | | | | 120 00 |
| | | | | $595 00 |

4th. For the purpose of paying the sum of , being the total amount assessed as aforesaid against the said roads (*or* lands, *as the case may be*) of the said Corporation a special rate of in the dollar shall, over and above all other rates, be levied (in the same manner and at the same time as taxes are levied) upon the whole ratable property in the said Township of , in each year, for the period of years, after the date of the final passing of this By-law.

Finally passed on the day of , A.D.

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## SCHEDULE B.

(*Section 19.*)

Affidavit of Reeve or other Head Officer.

County of } I
to wit. } of the of
in the County of
and Province of Ontario, (*Reeve*) of the Township of make oath and say:

1. On the day of in the year of our Lord the Municipal Council of the said Township of passed a By-law in regard to the drainage of a certain portion of the said Township, a true copy of which is now shown to me marked "A."

2. Before the said day of the said By-law, together with a

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notice that any one intending to apply to have such By-law, or any part thereof, quashed, must, within ten days after the passing thereof, serve a notice in writing upon the Reeve or other head officer, and upon the Clerk of the Municipality, of his intention to make application for that purpose to one of Her Majesty's Superior Courts of Law at Toronto, during the term next ensuing the final passing of the By-law, and together with a notice of the time of holding the Court of Revision of the said Township, was published on (*insert dates of publication*) in the (*insert name of newspaper*) a newspaper published at in the Township of (*if published in another Municipality add:* being the nearest Municipality to the said Township of in which a newspaper is published, there being no newspaper published in the said Township of ), a copy of which newspaper containing the said By-law and notice is now shown to me marked "B."

3. I have not been served with any notice of intention to make application to quash said By-law, nor with any notice of intention to make application to quash any part thereof, nor with any notice to that or the like effect.

4. To the best of my knowledge, information and belief, no person assessed by the said By-law paid the amount of his assessment, less the interest, or any part thereof, at any time before the actual issue of the debentures thereunder, which were issued on the day of in the year of our Lord

5. The amount of the rates assessed, as set forth in said By-law, have not been altered by the Court of Revision for the said Township of nor by the County Judge, nor has the said By-law been repealed or amended by the said Council of the said Township of but the said By-law is to all intents and purposes the same, and as valid and subsisting as it was when finally passed on the said day of in the year of our Lord

6. The copies of the specifications, and estimates for the said drainage now shown to me and marked are true and authentic copies of the specifications and estimates made by for the said drainage, as mentioned in the said By-law.

Sworn, &c.

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## SCHEDULE C.

*(Section 19.)*

AFFIDAVIT OF CLERK OF MUNICIPALITY.

County of } I,
to wit. } of the of
in the County of
and Province of Ontario, Clerk of the Township of
make oath and say:

1. That I have not been served with any notice of intention to make application to quash a certain By-law passed on the day of in the year of our Lord by the Municipal Council of the said Township of in regard to the drainage of a certain portion of the said Township, nor have I been served with any notice of intention to make application to quash any part of said By-law, nor with any notice to that or the like effect.

Sworn, &c.

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## AN ACT RESPECTING THE PUBLIC HEALTH.

(36 VIC., CAP. 43.)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Health officers may enter and examine premises.

**1.** The health officers of any Municipality or police village in Ontario, or any two of them, may, in the day time, as often as they think necessary, enter into and upon any premises in the place for which they hold office, and examine such premises.

Power to order cleansing.

**2.** If upon such examination they find that the premises are in a filthy or unclean state, or that any matter or thing is there which, in their opinion, may endanger the public health, they, or any two of them, may order the proprietor or occupant of the premises to cleanse the same and to remove what is so found there.

Powers to officers to cleanse.

**3.** Such health officers, in case the proprietor or occupier of the premises neglect or refuse to obey their directions, may call to their assistance all constables and any other per-

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sons they think fit, and may enter on the premises, and cleanse the same, and remove therefrom and destroy what in their opinion it is necessary to remove or destroy for the preservation of the public health.

When inhabitants of a house may be removed.

**4.** Whenever a disease of a malignant and fatal character is discovered to exist in any dwelling-house or out-house temporarily occupied as a dwelling in a City, Town, Village or Township in Ontario, or within a mile thereof, and which house is situated in an unhealthy or crowded part of the City, Town, Village or Township or adjoining country, or is in a filthy and neglected state, or is inhabited by too many persons, the health officers of the Municipality, or a majority of them, may, at the expense of the Municipality, compel the inhabitants of such dwelling-house or out-house to remove therefrom, and may place them in sheds or tents, or other good shelter, in some more salubrious situation, until measures can be taken, under the direction and at the expense of the Municipality, for the immediate cleansing, ventilation, purification and disinfection of such dwelling-house or out-house.

Medical men may be authorized by the officers to examine.

**5.** Such health officers or a majority of them may also, by warrant under their hands, authorize any two medical practitioners to enter in and upon any house, out-house or premises in the day time for the purpose of making inquiry and examination with respect to the state of health of any person therein; and may also, upon the report of such medical practitioners in writing recommending the same, cause any person found therein infected with a dangerously contagious or infectious disease to be removed to some hospital or other proper place; but no such removal shall take place unless the said medical practitioners shall state in their said report that such person can be removed without danger to life, and that such removal is necessary in order to guard against the spread of such disease to the adjoining house or houses.

On report of medical men, persons infected may be removed.

Who shall and may be health officers.

**6.** The members of the Municipal Council of every Township, City, Town and Incorporated Village, and the trustees of every police village, shall be health officers within their respective Municipalities, under the preceding sections of this Act; but any such Council may by By-law delegate the power of its members as such health officers to a committee of their own number, or to such persons, either including or not including one or more of themselves, as the Council thinks best.

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Lt.-Governor may regulate vessels, &c., in port, and landing, &c., of passengers and cargoes.

**7.** The Lieutenant-Governor in Council may make and declare such regulations concerning the entry or departure of boats or vessels at the different ports or places in Ontario, and concerning the landing of passengers or cargoes from such boats or vessels, or the receiving passengers and cargoes on board of the same, as may be thought best calculated to preserve the public health.

When epidemic, &c., probable, Lt.-Governor may proclaim following sections in force.

**8.** Whenever this Province, or any part thereof, or place therein, appears to be threatened with any formidable epidemic, endemic or contagious disease, the Lieutenant-Governor may, by proclamation to be by him from time to time issued, by and with the advice and consent of the Executive Council, declare the subsequent sections of this Act to be in force in this Province, or in any part thereof or place therein mentioned in such proclamation; and it shall thereupon be in force accordingly.

Power to revoke, renew, and limit duration of proclamation.

**9.** The Lieutenant-Governor may, in like manner, from time to time, as to all or any of the parts or places to which any such proclamation extends, revoke or renew any such proclamation; and subject to revocation and renewal, as aforesaid, every such proclamation shall have effect for six months, or for any shorter period in such proclamation expressed.

On proclamation, the first five sections suspended unless excepted.

**10.** Upon the issuing of any such proclamation, and whilst the same is in force, the first five sections of this Act shall be suspended as to every place mentioned in such proclamation, or being within any part of this Province included thereby, unless it be by the said proclamation declared that such sections or any of them shall be continued in force.

Central board of health, appointment of.

**11.** From time to time after the issuing of any such proclamation, and whilst it is in force, the Lieutenant-Governor may, by commission under his hand and seal, appoint five or more persons to be "The Central Board of Health," and also such officers and servants as he deems necessary to assist the Board; and the powers and duties of the said Board may be exercised and executed by any three members thereof; and during any vacancy in the said Board, the continuing members or member may act as if no vacancy had occurred.

Powers and duties of, how exercised.

Commission appointing Central

**12.** Every such commission shall, *ipso facto*, be determined by the revocation of the proclamation under which it issued, as to all the places included in such proclamation, or

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by the expiration of six months from the date of such proclamation, or of any shorter period expressed in such proclamation as that during which it is to be in force, unless such proclamation be renewed as to all or some of such parts and places.

Board determined by revocation of proclamation.

**13.** From time to time, while any such proclamation is in force, the Mayor or other head of the Municipal Corporation, inspecting trustee or other chief Municipal officer of any and every place mentioned in such proclamation, or included thereby, may call a special meeting of the Council or of the police trustees of such place, over which he presides, for the purpose of nominating a Local Board of Health.

Meeting to nominate board of health.

**14.** Such Municipal Corporation or police trustees shall nominate not less than three persons, resident within the limits of their respective jurisdictions (or in the case of a City, Town or Village, within seven miles thereof), to be "The Local Board of Health" for such place.

Local board of health, how appointed.

**15.** Such Mayor, or other head of the Municipal Corporation, inspecting trustee, or other chief Municipal officer, shall call such special meeting within two days from the receipt of a written requisition to that effect, signed by ten or more inhabitants, householders of the place, under the jurisdiction of the body over which he presides, on pain of being personally liable to the penalty hereinafter mentioned.

Meeting to nominate board of health imperative on certain requisitions.

**16.** If at any time while any such proclamation is in force, it is certified to the Lieutenant-Governor, by any ten or more inhabitant householders of any place included in such proclamation, that the Mayor or other head of such Municipal Corporation, or inspecting trustee, or other chief Municipal officer of such place, has failed to comply with such requisition, within such time as aforesaid, or that such Council or trustees have failed to nominate a Local Board, the Lieutenant-Governor in Council may forthwith appoint not less than three persons, resident within the limits of such place (or in the case of a City, Town or Village, within seven miles thereof), to be the Local Board of Health for such place.

When Lieut.-Governor may appoint local board.

**17.** Until a Local Board of Health be appointed under the provisions of the three preceding sections, the health officers of the Municipality shall exercise and perform the powers, authorities and duties of the Local Board, in conformity with the regulations of the Central Board, and shall act in every

Till appointment of local board, health officers may act as such.

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respect as if they were a Local Board of Health appointed under the fourteenth section of this Act.

Appointment of local board, when determined by revocation of commission.

**18.** Every nomination or appointment of a Local Board of Health under the fourteenth or sixteenth sections of this Act shall, *ipso facto*, be determined by the revocation as to the place within the limits of which such Local Board is authorized to act, or as to any place in which it is included, or as to the whole Province, of the proclamation under which such Local Board was appointed; or by the expiration of six months from the date of such proclamation, or of any shorter period expressed in such proclamation as that during which it is to be in force; unless such proclamation be renewed as to such place, or any place in which it is included, or as to the whole Province.

Power of central board to make regulations to prevent infection, &c.

**19.** The Central Board of Health, or any three or more members thereof, may from time to time issue such regulations as they think fit, for the prevention, as far as possible, or the mitigation of such epidemic, endemic or contagious diseases, and may revoke, renew or alter any such regulations, or substitute such new regulations as to them or any three of them appear expedient.

Powers of central board as to regulations.

**20.** The said Board may, by such regulations, provide:

1. For the frequent and effectual cleansing of streets by the road surveyors or overseers of highways and others entrusted with the care and management thereof, or by the owners or occupiers of houses and tenements adjoining thereto;

2. For the cleansing, purifying, ventilating and disinfecting of houses, dwellings, railway stations, churches, buildings and places of assembly, steamboats, railway carriages and cars, and other public conveyances, by the owners and occupiers, and persons having the care and ordering thereof;

3. For the removal of nuisances;

4. For the speedy interment of the dead;

5. For preventing or mitigating such epidemic, endemic or contagious diseases, in such manner as to the said Central Board seems expedient.

Power to central board to require local board to execute their regulations, &c.,

**21.** The said Central Board may by any such regulations authorize and require the Local Boards of Health to superintend and see to the execution of any such regulations; and (where it appears that there may be default or delay in the execution thereof, by want or neglect of such surveyors,

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overseers, or others entrusted as aforesaid, or by reason of poverty of occupiers or otherwise) to execute or aid in executing the same within their respective limits; and to provide for the dispensing of medicine and for affording to persons afflicted by or threatened with such epidemic, endemic or contagious diseases, such medical aid as may be required; and to do and provide all such acts, matters and things as are necessary for superintending or aiding in the execution of such regulations, or for executing the same, as the case may require.

and to remove inmates of certain houses.

**22.** The Central Board of Health may also by any such regulations authorize and require the Local Boards of Health, in all cases in which diseases of a malignant and fatal character are discovered to exist in any dwelling-house, or out-house temporarily occupied as a dwelling, situate in an unhealthy or crowded locality, or being in a neglected or filthy state, at the proper costs and charges of such Local Boards of Health to compel the inhabitants of any such dwelling-house or out-house to remove therefrom, and to place them in sheds or tents, or other good shelter, in some more salubrious situation, until measures can be taken by and under the directions of the Local Boards of Health, for the immediate cleansing, ventilation, purification and disinfection of the said dwelling-house or out-house.

Regulations, extent of locality to which applicable.

**23.** The directions and regulations to be issued as aforesaid shall extend to all parts or places in which this Act shall, for the time being, be in force under any such proclamation as aforesaid, unless such regulations be expressly confined to some of such parts or places, and then to such parts or places as in such directions and regulations shall be specified, and (subject to the power of revocation and alteration herein contained) shall continue in force so long as this Act shall be in force under such proclamation in the parts or places to which such regulations extend.

Members of local boards to be health officers; powers of.

**24.** The members of the said Local Boards of Health shall be called health officers; and any two or more of them acting in the execution of any such regulations as aforseaid, may exercise the like powers and authorities as are conferred upon health officers by sections four and five of this Act.

Powers of officers if their orders disobeyed.

**25.** In case the owner or occupier of any dwelling or premises neglect or refuse to obey the orders given by such health officers, in pursuance of such regulations, such health officers may call to their assistance all constables and peace



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officers and such other persons as they think fit, and may enter into such dwelling or premises, and execute the same or cause to be executed therein such regulations, and remove therefrom and destroy whatsoever, in pursuance of such regulations, it is necessary to remove and destroy for the preservation of the public health.

Expenses of central and local boards, how defrayed.

**26.** The expenses incurred by the said Central Board of Health shall be defrayed out of any moneys appropriated by the Legislature for that purpose; and the expenses incurred by the said Local Boards of Health in the execution or in superintending the execution of the regulations of the Central Board, shall be defrayed and provided for in the same manner and by the same means as expenses incurred by the Municipal Corporations, having jurisdiction over the respective places for which such Local Boards of Health were appointed, are by law required to be defrayed and provided for.

Any two members of local board may order municipal treasurer to pay.

**27.** The treasurer of the Municipality shall forthwith upon demand pay out of any moneys of the Municipality in his hands the amount of any order given by the members of the Local Board or any two of them for services performed under their direction by virtue of this Act.

Proclamation to be published. Regulations of central board invalid till confirmed and published.

**28.** Every proclamation of the Lieutenant-Governor in Council under this Act shall be published in the *Ontario Gazette*; and no direction or regulation of the said Central Board of Health shall have any force or effect until it has been confirmed by the Lieutenant-Governor in Council, and has thereafter been published in the *Ontario Gazette*.

Publication to be evidence of certain facts. Regulations and proclamation to be laid before legislative assembly.

**29.** Such publication of any such proclamation or regulation shall be conclusive evidence of the proclamation or regulation so published, and of the confirmation of such regulation as aforesaid, and of the dates thereof respectively to all intents and purposes; and every such proclamation and regulation shall forthwith upon the issuing thereof be laid before the Legislative Assembly if it be then sitting, and if not, then within the fourteen days next after the commencement of the next session thereof.

On publication of regulations certain municipal by-laws cease.

**30.** Upon the publication of any such regulations as aforesaid, and whilst they continue in force, all By-laws of the Municipal Corporation of any place to which such regulations or any of them relate, made for preserving the inhabitants thereof from contagious diseases or for any

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other of the purposes for which such regulations are by this Act required to be issued, shall become and be suspended.

Penalty for disobedience of orders of officers and regulations.

**31.** Whosoever wilfully disobeys or resists any lawful order of the health officers, or wilfully obstructs any person acting under the authority or employed in the execution of this Act, either before or after the appointment of a Central Board of Health, or wilfully violates any regulations made and declared by the Lieutenant-Governor in Council or issued by the Central Board of Health under this Act, or neglects or refuses to comply with such regulations, or with the requirements of this Act in any matter whatsoever, shall be liable for every such offence to a penalty not exceeding twenty dollars, to be recovered by any person before any two Justices or a Police Magistrate, and to be levied by distress and sale of the goods and chattels of the offender, with the costs of such distress and sale by warrant, under the hands and seals of the Justices, or hand and seal of the Police Magistrate, before whom the same are recovered, or under the hands and seals of any other two Justices.

Committal of offender.

**32.** If it appear to the satisfaction of such Justices or Police Magistrate, before or after the issuing of their or his warrant, either by the confession of the offender or otherwise, that he hath not goods and chattels within his or their jurisdiction sufficient to satisfy the amount, he or they may commit him to any gaol, lock-up, or house of correction for any time not exceeding fourteen days, unless the amount be sooner paid, in the same manner as if a warrant of distress had issued, and a return of *nulla bona* had been made thereon.

Penalties to be payable to municipality.

**33.** All penalties whatever, recovered under this Act, shall be paid to the treasurer of the Municipality in which such penalties have been incurred, for the use of the Municipality.

Offences may be prosecuted notwithstanding repeal of proclamation.

**34.** All offences committed against this Act while the same is in force in this Province, or in any part thereof, shall be prosecuted, and the parties committing the same, convicted and punished therefor as herein provided, as well after as during the time that such proclamation or proclamations shall be in force.

No proceeding to be quashed for want of

**35.** No order nor any other proceeding, matter or thing done or transacted in, or relating to the execution of this Act, shall be vacated, quashed or set aside for want of form,

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form, or be removable into superior court.

or be removed or removable by *certiorari*, or other writ or process whatsoever, into any of the Superior Courts in this Province.

Interpretation.

**36.** In this Act, the following words and expressions shall have the meanings hereinafter assigned to them, unless such meanings be repugnant to or inconsistent with the context; that is to say, the word "place" shall mean a City, Town, Village, Township, or any other territorial division recognized or designated by law as a separate Municipality or Municipal division, and shall also mean and include a police village; the word "street" shall include every highway, road, square, row, lane, mews, court, alley and passage, whether a thoroughfare or not.

"place."

"street."

Con. Stat. U. C. ch. 59, Con. Stat. Ca., ch. 38, repealed.

**37.** Chapter fifty-nine of the Consolidated Statutes for Upper Canada is hereby repealed, and chapter thirty-eight of the Consolidated Statutes of Canada is also repealed, so far as the provisions thereof affect the Province of Ontario.

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## AN ACT TO EXTEND THE ELECTIVE FRANCHISE.

(37 Vic., Cap. 3.)

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Who may vote at elections to the legislative assembly or municipal councils.

**1.** In addition to the persons hitherto entitled to vote at elections to the Legislative Assembly or Municipal Councils, the right of voting shall hereafter belong to every male person residing at the time of the election in the local Municipality in which he tenders his vote; having resided therein continuously since the completion of the last revised assessment roll of the Municipality; and possessing the qualifications and performing the conditions required by the laws heretofore in force, and not subject by the said laws to any disqualification, except as to property:

Income franchise.

Provided that he derives an income from some trade, calling, office or profession of not less than four hundred dollars annually, and is assessed for such income in and by the last revised assessment roll of the Municipality.

The case of income exempted from assessment.

**2.** Where any person has an income derived as aforesaid which is entitled by law to exemption from assessment, he shall not be bound to avail himself of such right to exemption, and, if he think fit, he may require his name to be

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entered in the assessment roll for such income, and the same shall in such case be liable to taxation like other assessable income or property.

Voters' list.

**3.** The Clerk of the Municipality, when making the alphabetical list of voters required by law, shall include the names of all male persons assessed for income of the value aforesaid.

Oath to voter.

**4.** The oath to be administered to persons entitled to vote under this Act shall be as follows:

"You swear (*or solemnly affirm*) that you are the person named (*or purporting to be named by the name of* ) on the list of voters now shown to you (*showing the list to voter*); that at the time of the last final revision of the assessment roll on which this list is based for this Township (*City, Town or Village, as the case may be*) you were, and thenceforward have been continuously, and still are a resident of this Township (*City, Town or Village, as the case may be*); that at the time of the last revision of the assessment roll, upon which the voters' list used on this election is based, and for twelve months previously, you were in receipt of an income from your trade (*office, calling or profession, as the case may be*) of a sum of not less than four hundred dollars; that you are a subject of Her Majesty by birth (*or naturalization, as the case may be*); that you are of the full age of twenty-one years; that you have not before voted at this election, either at this or any other polling place; and that you have not received anything, nor has anything been promised you, either directly or indirectly, either to induce you to vote at this election, or for loss of time, travelling expenses, hire of team, or any other service connected therewith; and that you have not, directly or indirectly, paid or promised anything to any person, either to induce him to vote or to refrain from voting: So help you God."

Penalties.

**5.** The penalties imposed on all Municipal officers under the Assessment Acts, for omitting or refusing to comply with the law, shall be imposed on and recoverable in like manner from all such officers as may refuse or neglect to observe the terms of this Act.

Construction of act.

**6.** This Act shall be construed as one with the Election Law of 1868, the Assessment Act of 1869, and the Act respecting Municipal Institutions in the Province of Ontario,

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and with any other enactments relating to the subject matter of this Act.

When this act to come in force.

**7.** This Act shall take effect on and after the first day of January, in the year one thousand eight hundred and seventy-five.

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## AN ACT RESPECTING VOTERS' LISTS.

(37 Vic., Cap. 4.)

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Assessor to make inquiries before assessing persons claiming to be assessed.

**1.** To prevent the creation of false votes, where any person claims to be assessed, or claims that any other person should be assessed, as owner or occupant of any parcel of land, or as possessing the income which may entitle him to vote in the Municipality at an election for the Legislative Assembly, and the assessor has reason to suspect that the person so claiming, or for whom the claim is made, has not a just right to be so assessed, it shall be the duty of the assessor to make reasonable inquiries before assessing such person.

Clerk to state in list of voters persons qualified by income.

**2.** In the alphabetical list or lists of persons appearing by the assessment roll to be entitled to vote in a Municipality or in each of its sub-divisions (as the case may be), being the list or lists required to be prepared under the seventh section of the Election Act of 1868, if the qualification is in respect of income, the Clerk shall, in the proper list, state that fact, and the place at which the voter resides in the Municipality.

Copies of list to be printed.

Copies to be posted in clerk's office, and copies to be sent to certain persons.

**3.** Immediately after the Clerk has made the said alphabetical list, and at latest within thirty days after the final revision and correction of the assessment roll, the Clerk shall cause at least two hundred copies of said list to be printed; and shall cause one of such printed copies to be posted up, and to be kept posted up, in some conspicuous place in his own office; and shall forthwith also deliver or transmit by registered letter two of such copies to each of the following persons, that is to say:

Every member of the Municipal Council of the Municipality except the Reeve;

Every teacher of a public school in the Municipality;

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Every postmaster in the Municipality;

The Treasurer thereof;

The Sheriff of the County;

The County Judge, or each of the County Judges in case there shall be more than one County Judge in the electoral division;

The Clerk of the Peace;

Clerk of the municipality to transmit copies to certain persons.

2. And the Clerk of the Municipality shall forthwith also deliver or transmit, by registered letter, ten of such copies to each of the following persons, that is to say:

The member of the House of Commons and the member of the Legislative Assembly for the electoral division, respectively, in which the Municipality lies;

The unsuccessful candidate or each of the candidates (as the case may be), for whom votes were given at the then last election of a member for the House of Commons and for the Legislative Assembly, respectively;

The Reeve of the Municipality;

On each copy the clerk to certify as to certain matters.

3. Upon each of the copies so sent to each person shall be a printed or written certificate, over the name of the Clerk, stating that such list is a correct list of all persons appearing by the assessment rolls of the Municipality entitled to vote at elections for members of the Legislative Assembly; and also stating the date upon which a copy of such list was first posted in the Clerk's office; and further, calling upon all electors to examine the said list, and, if any omissions or other errors are perceived therein, to take immediate proceedings to have the said error corrected according to law;

Sheriff, clerk of the peace, teacher and postmaster to post up a copy.

4. The Sheriff shall, immediately upon the receipt of his copies, cause one of them to be posted in a conspicuous place in the court house; the Clerk of the Peace, upon receipt of his copies, shall cause one of them to be posted in a conspicuous place in his office; every public teacher shall in like manner post up one of his copies on the door of his school-house; and every postmaster shall post up one of his copies in his post office.

Clerk to publish notice of first posting up by him.

4. The Clerk shall also forthwith cause to be inserted in some newspaper published in the Municipality, or in case no newspaper is published in the Municipality, then in some newspaper published in the Municipality next thereto, or in the County Town, a notice, signed by him, stating the date of the first posting up of the said list in his office. One insertion of such notice shall be sufficient.

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Revision of list.

**5.** The said list of voters shall be subject to revision by the County Judge, at the instance of any voter or person entitled to be a voter, on the ground of names of voters being omitted from the list, or being wrongly stated therein, or of names of persons being inserted on the list who are not entitled to vote; and upon such revision the assessment roll shall not be conclusive evidence in regard to any particular, whether the matter on which the right to vote depends had or had not been brought before the Court of Revision, or had or had not been determined by that Court; and the decision of the Judge under this Act, in regard to the right of any person to vote, shall be final so far as regards such person.

Proceedings on person complaining of error in the list.

**6.** A person complaining of any error in the said list shall, within thirty days after the Clerk has posted the said list in his office, and transmitted or delivered the said copies, give to the Clerk of the Municipality a written notice of his complaint and intention to apply to the Judge in respect thereof; and the proceedings thereafter by the Clerk, Judge and parties respectively, and the respective powers and duties of the Judge, Clerk and other persons, shall be the same, or as nearly as may be the same, as in the case of an appeal from the Court of Revision; but no deposit shall be required to be made before any such complaint is heard or disposed of.

List confirmed if no complaint within 30 days from first posting.

**7.** In case no complaint respecting such list is received by the Clerk of the Municipality within thirty days after the first posting up of the same, the Clerk shall apply to the Judge to certify one of the copies received by the Judge as being the revised list of voters for the Municipality; and a duplicate of the list shall be retained by the Judge; and the certified copy shall be delivered to the Clerk of the Municipality, to be kept by him among the records of his office.

Compelling attendance of witnesses on revision of list.

**8.** Any party may obtain from the County Court a subpœna requiring the attendance at the Court for hearing complaints as aforesaid, at the time mentioned in such subpœna, of a witness residing or served with such subpœna, in any part of this Province; and the witness shall obey such subpœna, provided the allowance for his expenses, according to the scale allowed in Division Courts, is tendered to him at the time of service; and any person complaining, or any person in respect of the insertion or

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omission of whose name a complaint is made, shall, if resident within the Municipality, upon being served with a subpœna, obey the same without being tendered or paid any allowance for his expenses. If any person whose right to be a voter is the subject of inquiry, do not attend in obedience to such subpœna, the Judge may, if he think fit, on the ground of the non-attendance of such person, strike his name off the list of voters, or refuse to place his name on the list of voters, as the case may require, or impose a reasonable fine on such person, according to his discretion.

Penalty on non-attendance of the person whose right is in question.

**9.** Immediately after the list has been finally revised and corrected as aforesaid, the Judge shall make in writing, and sign, a statement, in duplicate, setting forth the changes, if any, which he has made in the list; and shall in open Court certify a corrected copy of the list, and deliver a correct copy to the Clerk of the Municipality; and the latter shall forthwith transmit to the Clerk of the Peace a copy of the said corrected list, accompanied with the proper oath or affirmation of the correctness thereof, as directed by the said Act. And no person shall be admitted to vote unless his name appears on the last list of voters made, certified, and delivered to the Clerk of the Peace at least one month before the date of the writ to hold the election; and no question of qualification shall be raised at any such election, except to ascertain whether the party tendering his vote is the same party intended to be designated in the alphabetical list as aforesaid.

After final revision, judge to make statement of alterations made, and certify a correct copy of list.

Who may vote.

**10.** In case of errors being found in the said voters' list on the said revision thereof, whether such errors are in the omission of names, the inaccurate entry of names, or the entry of names of persons not entitled to vote, if it appear to the Judge that the assessor was blamable for any of the said errors, the Judge shall order the assessor, either alone or jointly with any other person, to pay all costs occasioned by the same; and in case of errors for which the Clerk was to blame, the Clerk, either alone or jointly with any other person, shall be charged with the costs; and in case of errors of the Court of Revision, the Municipality shall, either alone or jointly with any person, pay the costs, subject to any claim which the Municipality may justly have against the guilty parties; or the Judge may order the Assessor, Clerk or Municipality in any such case to pay the costs, if any party fail to recover the same from any other party named and ordered to pay the same; and in all cases

Costs occasioned by errors may be ordered to be paid by guilty parties.

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not herein provided for, the costs shall be in the discretion of the Judge.

Persons whose names omitted from roll and inserted on revision, liable to pay taxes.

Judge's order.

**11.** If a person not assessed, or not sufficiently assessed, shall be found entitled to vote, the Municipality shall be entitled to recover taxes from him, and to enforce payment thereof by the same means and in the same manner as if he had been assessed on the roll for the amount found by the Judge; and the Judge shall make an order, setting forth the names of the persons so liable, and the sum for which each person should have been assessed, and the land or other property in respect of which the liability exists; and such order shall be transmitted to the Clerk of the Municipality, and shall have the same effect as if the said particulars had been inserted on the roll.

Penalty on the clerk for errors or omissions.

**12.** For every name erroneously inserted in or omitted from any list of voters, or duplicate required under this Act, the Clerk offending shall pay and forfeit to any person who may sue therefor the sum of one dollar, and shall also pay to any person applying to the Judge to have any such error corrected, the costs incurred by him in respect thereof; and the payment of the penalty imposed by this section shall not relieve the Clerk from any additional penalty attaching to any willful and wrongful act.

Penalty on assessor for wrongfully assessing or omitting.

**13.** Any assessor who wilfully and improperly inserts any name in the assessment roll, or assesses any person at too high an amount, with intent in either case to give to any person not entitled thereto an apparent right of voting at any election, or who wilfully inserts any fictitious name in the assessment roll, or who wilfully and improperly omits any name from the assessment roll, or assesses any person at too low an amount, with intent in either case to deprive any person of his right to vote, shall, upon conviction thereof before a Court of competent jurisdiction, be liable to a fine not exceeding two hundred dollars, and to imprisonment until the fine be paid, or to imprisonment in the common gaol of the County or City for a period not exceeding six months, or to both such fine and imprisonment, in the discretion of the Court.

Colourable transfer of property in order to confer vote.

**14.** No person shall make, execute, accept or become a party to any lease, deed or other instrument, or become a party to any verbal arrangement whereby a colourable interest in any land, house or tenement is conferred, in order to qualify any person to vote at an election; and any

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person violating the provisions of this section, besides being liable to any other penalty prescribed in that behalf, shall pay and forfeit the sum of one hundred dollars, with costs of suit, to any person suing therefor in any Court of competent jurisdiction; and any person who induces or attempts to induce another to commit an offence under this section shall incur a like penalty.

**15.** This Act shall apply to the assessments and voters' lists of the present year as well as afterwards. Act to apply to this year's list.

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## AN ACT RESPECTING MUNICIPAL DRAINAGE BY-LAWS.

(37 VIC., CAP. 20.)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Every Municipal Council shall, upon the petition of the majority in number of all the owners, whether resident or non-resident, of the property to be benefited, have the same authority to pass By-laws for the construction of drainage works by local assessment, as they would have upon the petition of the majority in number of the owners shown by the last revised assessment roll to be resident on the property to be benefited. Powers as to drainage on petition of residents or non-residents.

**2.** In case any By-law already passed, or which may be hereafter passed by the Council of any Municipality for the construction of drainage works by assessment upon the real property to be benefited thereby, and which has been acted upon by the construction of such works in whole or in part, does not provide sufficient means for the completion of the works, or for the redemption of the debentures authorized to be issued thereunder as the same become payable, the said Council may, from time to time, amend the By-law in order fully to carry out the intention thereof, and of the petition on which the same was founded. Power to amend by-law when no sufficient means provided for completion of the work.

**3.** No debenture issued or to be issued under any By-law aforesaid shall be held invalid on account of the same not being expressed in strict accordance with such By-law, provided that the debentures are for sums not in the whole exceeding the amount authorized by the By-law. Debentures not to be invalid though not in accordance with by-law.

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Investment in purchase of debentures by Lieutenant-Governor in council made valid.

**4.** Any investment heretofore made, or which may be hereafter made by the Lieutenant-Governor in Council, in the purchase of debentures issued under any Municipal By-law for the construction of drainage works, passed under the authority of the Municipal Law of Ontario, shall stand upon the same footing and be as valid and effectual as if such By-law had been passed under the authority of "The Municipal Drainage Aid Act" of 1873.

Lieut.-Governor in council may advance par value of debentures.

**5.** The Lieutenant-Governor may, in his discretion, advance the whole par value of debentures instead of eighty-five per centum merely of such par value, before the completion of the works.

36 V., c. 39, ss. 1 to 18, and ss. 27, 28 repealed.

**6.** Sections one to eighteen inclusive, and also sections twenty-seven and twenty-eight of "The Municipal Drainage Aid Act" of 1873 are hereby repealed; and the proceeding authorized thereby shall hereafter be taken under sections numbered from four hundred and forty-seven to four hundred and sixty-three, inclusive, of the Municipal Institutions Act of one thousand eight hundred and seventy-three.

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## AN ACT RESPECTING LINE FENCES.

(37 Vic., Cap. 25.)

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Repeal of previous enactments.

**1.** The Act chaptered fifty-seven of the Consolidated Statutes for Upper Canada; the Act chaptered forty-six of the Statutes of Ontario, passed in the thirty-second year of Her Majesty's reign, so far as they affect line fences, and all Acts and parts of Acts respecting the subject provided for in this Act, are repealed.

Duties of owners of adjoining lands as to fences.

**2.** Owners of occupied adjoining lands shall make, keep up and repair a just proportion of the fence which marks the boundary between them; or if there is no fence, they shall so make, keep up and repair the same proportion, which is to mark such boundary; and owners of unoccupied lands which adjoin occupied lands, shall, upon their being occupied, be liable to the duty of keeping up and repairing such proportion, and in that respect shall be in the same position as if their land had been occupied at the time of

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the original fencing, and shall be liable to the compulsory proceedings hereinafter mentioned.

Disputes between owners, how to be settled.

**3.** In case of dispute between owners respecting such proportion, the following proceedings shall be adopted: Either owner may notify the other owner or the occupant of the land of the owner so to be notified, that he will, not less than one week from the service of such notice, cause three fence viewers of the locality to arbitrate in the premises. Such owners so notifying shall also notify the fence viewers, not less than one week before their services are required. The notices in both cases shall be in writing, signed by the person notifying, and shall specify the time and place of meeting for the arbitration, and may be served by leaving the same at the place of abode of such owner or occupant, with some grown-up person residing thereat; or in case of such lands being untenanted, by leaving such notice with any agent of such owner. The owners notified may, within the week, object to any or all of the fence viewers notified, and in case of disagreement, the Judge hereinafter mentioned shall name the fence viewers who are to arbitrate.

Duties and powers of fence viewers.

**4.** The fence viewers shall examine the premises, and if required by either party, they shall hear evidence, and are authorized to examine the parties and their witnesses on oath, and any one of them may administer the oath or an affirmation, as in courts of law.

Award of fence viewers and powers.

**5.** The fence viewers shall make an award in writing, signed by any two of them, respecting the matters so in dispute; the award shall specify the locality, quantity, description, and the lowest price of the fence it orders to be made, and the time within which the work shall be done; and the award shall state by which of the said parties the costs of the proceedings shall be paid, or whether either party shall pay some proportion of such costs. And in making such award the fence viewers shall regard the nature of the fences in use in the locality, the pecuniary circumstances of the persons between whom they arbitrate, and generally the suitableness of the fence ordered to the wants of each party; and where from the formation of the ground, by reason of streams or other causes, it is found impossible to locate the fence upon the line between the parties, it shall be lawful for the fence viewers to locate the said fence either wholly or partially on the land of either of the said parties, where to them it may seem to be most convenient;

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but such location shall not in any way affect the title to the land. If necessary, the fence viewers may employ a provincial land surveyor, and have the locality described by metes and bounds.

Deposit of award.

Award may be evidence.

**6.** The award shall be deposited in the office of the Clerk of the Council of the Municipality in which the lands are situate; it is an official document, and may be given in evidence in any legal proceeding by certified copy, as are other official documents; and notice of its being made shall be given to all parties interested.

Award, how enforced.

**7.** The award may be enforced as follows:—The person desiring to enforce it must serve upon the owner or occupant of the adjoining lands a notice in writing, requiring him to obey the award, and if the award is not obeyed within one month after service of such notice, the person so desiring to enforce it may do the work which the award directs, and immediately recover its value and the costs from the owner by action in any Division Court having jurisdiction in the locality: Provided always, that the Judge of such Division Court may, on application of either party, extend the time for making such fence to such time as he may think just.

Award to be a charge on lands, if registered.

How registered.

**8.** The award is a lien and charge upon the lands respecting which it is made, provided that it is registered in the Registry Office of the County in which the lands are. Such registration may be in duplicate or by copy, proved by affidavit of a witness to the original, or otherwise, as in the case of any deed which is within the meaning of the Acts respecting registration of deeds of lands.

Duty and liability of occupants as to notifying owners.

**9.** An occupant, not the owner of land, notified in the manner above mentioned, must immediately notify the owner; if he neglect so to do, he is liable for all damage caused to the owner by such neglect.

Fees to fence viewers and witnesses.

**10.** The fence viewers are entitled to receive two dollars each for every day's work under this Act. Provincial Land Surveyors and witnessess are entitled to the same compensation as if they were subpœnaed in any Division Court.

Appeals.

**11.** Any person dissatisfied with the award made may appeal therefrom to the Judge of the County Court of the County in which the lands are situate; for such appeal the proceedings shall be as follows: The appellant shall serve upon the fence viewers, and all parties interested, a notice

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in writing of his intention to appeal, not less than one week from the time he has been notified of the award; such notice may be served as other notices mentioned in this Act. The appellant must also deliver a copy of such notice to the Clerk of the Division Court of the Division in which the land lies, which Clerk shall immediately notify the Judge of such appeal, whereupon the Judge shall appoint a time for the hearing thereof, and, if he think fit, order such sum of money to be paid by the appellant to the said Clerk as shall be a sufficient indemnity against costs of the appeal, and the Judge shall order the time and place for the hearing of the appeal, and communicate the same to the Clerk, who shall notify the fence viewers and all parties interested, in the manner hereinbefore provided for the service of other notices under this Act; and the Judge shall hear and determine the appeal, and set aside, alter, or affirm the award, correcting any error. He may examine parties and witnesses on oath, and, if he so please, may inspect the premises; he may order payment of costs by either party, and fix the amount, and his decision shall be final; and the award, as so altered or confirmed, shall be dealt with in all respects as it would have been if it had not been appealed from. Powers of the judge.

**12.** Any agreement between owners respecting such line fence in writing may be filed or registered and enforced as if it was an award of fence viewers. Registration of agreements.

**13.** The forms in the schedules are to guide the parties, being varied according to circumstances. Forms.

**14.** This Act is not to affect any proceedings under former Acts. Pending proceedings excepted.

**15.** This Act may be cited in any proceeding or document as the "Ontario Line Fences Act." Short title.

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## SCHEDULE A.

### Notice to Opposite Party.

Take notice, that Mr. , Mr. , and Mr. , three fence viewers of this locality, will attend on the day of 18 , at the hour of , to view and arbitrate upon the line fence in dispute between our properties, being lots *one* and *two* in the

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Concession of the Township of , in the County of .

Dated this day of 18 .

*A. B.*,
Owner of Lot 1.

To *C. D.*,
Owner of Lot 2.

## SCHEDULE B.

### Notice to Fence Viewers.

Take notice, that I require you to attend at on the day of A.D. 18 , at o'clock, A.M., to view and arbitrate on the line fence between my property and that of Mr. , being lots Nos. *one* and *two* in the Concession of the Township of , in the County of .

Dated this day of 18 .

*A. B.*,
Owner of Lot.

## SCHEDULE C.

### Award.

We, the fence viewers of the locality, having been nominated to view and arbitrate upon the line fence between by (*name and description of owner who notified*) and (*name and description of owner notified*), which fence is to be made and maintained between (*describe properties*), and having examined the premises and duly acted according to the Ontario Line Fences Act, do award as follows: That part of the said line which commences at and ends at (*describe the points*) shall be fenced, and the fence maintained by the said , and that part thereof which commences at and ends at (*describe the points*) shall be fenced, and the fence maintained by the said . The fence shall be of the following description: (*state the kind of fence, height, material, &c.*) and shall cost at least per rod. The work shall be commenced within days, and completed within days from this date, and the costs shall be paid by (*state by whom paid; if by both, in what proportion*).

Dated this day of A.D. 18 .

(*Signatures of Fence Viewers.*)

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SCHEDULE TO AGREEMENT.

We and owners respectively of lots *one* and *two* in the Concession of the Township of , in the County of , do agree that the line fence which divides our said properties shall be made and maintained by us as follows: (*follow same form as in the award*).

Dated this day of A.D. 18 .

(*Signatures of parties.*)

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## AN ACT RESPECTING PUBLIC AID TOWARDS MAKING GAOL ADDITIONS AND ALTERATIONS.

(37 VIC., CAP. 31.)

Preamble.

WHEREAS it was by the twenty-first section of the "Prison and Asylum Inspection Act" of the late Province of Canada, being chapter one hundred and ten of the Consolidated Statutes of Canada, provided that, in order to aid the County Councils in Upper Canada in making the alterations and additions prescribed in the said Act, in the gaols of their respective Counties, that the Governor of the Province of Canada might pay from out of the Upper Canada Building Fund, to the Treasurer of each County, a sum not exceeding one-half of the expense of the same, and not exceeding the sum of six thousand dollars for any one County; and whereas, by an Act passed in the thirty-first year of Her Majesty's reign, and chaptered seven, the said Prison and Asylum Inspection Act was repealed; and whereas, previous to the repeal of the said recited section, various County Councils in Ontario were aided under the provisions thereof; and whereas other County Councils, which have not been so aided, have made alterations and additions to their gaols, in order to meet the requirements of the said Act and of the "Prison and Asylum Inspection Act" of Ontario, and alterations and additions are required by other gaols in this Province, in counties which have not received aid under the said section, and it is desirable to revive the said section in order to place the various Counties in Ontario on an equal footing:

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:



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Aid to county councils for alterations to gaols.

**1.** In order to aid the County Councils in Ontario in making the alterations and additions required by law in the gaols of their respective Counties, the Lieutenant-Governor in Council may, by order in Council, direct that out of the Consolidated Revenue Fund of Ontario there shall be paid to the Treasurer of each such County which has not been aided under the said "The Prison and Asylum Inspection Act" of the late Province of Canada, a sum not exceeding one-half of the expense of making such alterations or additions, and not exceeding the sum of six thousand dollars for any one County.

Construction of preceding section.

**2.** The preceding section shall be construed as if the same had been on the twenty-eighth day of February, in the year of our Lord one thousand eight hundred and sixty-eight, that being the date of the repeal as aforesaid of said section twenty-one of chapter one hundred and ten of the Consolidated Statutes of Canada, passed to take effect in lieu of the said section so repealed; but every such order in Council made under said preceding section shall, as soon as conveniently may be after the making thereof, be laid before the Legislative Assembly for its ratification or rejection, and no such order shall be operative unless and until the same shall have been ratified by a resolution of said Legislative Assembly.

Orders in council to be submitted to the Legislative Assembly.

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## AN ACT TO AMEND AND CONSOLIDATE THE LAW FOR THE SALE OF FERMENTED OR SPIRITUOUS LIQUORS.

(37 VIC., CAP. 32.)

Preamble.

WHEREAS it is expedient to amend and consolidate the Act passed in the thirty-second year of Her Majesty's reign, intituled "An Act respecting Tavern and Shop Licenses," and the Act passed in the thirty-third year of the same reign, amending the same, and the Act passed in the thirty-sixth year of the same reign, intituled "An Act to amend the Acts respecting Tavern and Shop Licenses:"

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

*Interpretation.*

Meaning of words "liquors" and "liquor."

**1.** In this Act the word "liquors" or "liquor" shall be understood to mean and comprehend all spirituous and malt

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liquors, and all combinations of liquors and drinks and drinkable liquids which are intoxicating.

*Licenses.*

Meaning of words "tavern license."

**2.** A "tavern license" shall be construed to mean a license for selling, bartering or trafficking by retail in fermented, spirituous or other liquors, in quantities of less than one quart, which may be drunk in the inn, ale or beer-house, or other house of public entertainment in which the same liquor is sold.

Meaning of words "shop license."

**3.** A "shop license" shall be construed to mean a license for selling, bartering or trafficking by retail in such liquors in shops, stores, or places other than inns, ale or beer-houses, or other houses of public entertainment, in quantities not less than three half-pints, at any one time, to any one person, and at the time of sale to be wholly removed and taken away, in quantities not less than three half-pints at a time.

Meaning of words "license by wholesale."

**4.** A "license by wholesale" shall be construed to mean a license for selling, bartering or trafficking, by wholesale only, in such liquors in warehouses, stores, shops or places other than inns, ale or beer-houses, or other houses of public entertainment, in quantities not less than five gallons in each cask or vessel at any one time; and in any case where such selling by wholesale is in respect of bottled ale, porter, beer, wine or other fermented or spirituous liquor, each such sale shall be in quantities not less than one dozen bottles of at least three half-pints each, or two dozen bottles of at least three-fourths of one pint each, at any one time.

Liquor in bottles.

*Issue of Licenses.*

Issue of licenses.

**5.** It shall be lawful for the Lieutenant-Governor in Council to direct the issue of licenses on stamped paper, written or printed, or partly written and partly printed, of the several kinds hereinbefore mentioned; which said licenses shall be signed by the Treasurer of this Province, and dated as of the first day of March in each year, and shall thence continue in force for one year, until the first day of March in the next ensuing year, and no longer: Provided, that tavern and shop licenses may be issued between the first and fifteenth days of March in each year; and licenses by wholesale may be issued between the first and last days of March in each year; and all such licenses shall be deemed to have been issued on the said first day of March.

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Issuer of licenses to be appointed, his duty.

**6.** The Lieutenant-Governor may, from time to time, appoint to hold office during pleasure one fit and proper person, other than the Inspector of Licenses, in each County, City, Riding or Municipality, to be called "Issuer of Licenses," whose duty it shall be to issue licenses for the County, City, Riding or Municipality for which he shall be appointed, and who shall countersign every license issued by him, and shall state thereon the date of such countersigning; and every such license shall take effect in favour of the applicant therefor from the time of such countersigning, and not before.

Remuneration for services.

**7.** For his services in the last preceding section mentioned, the said Issuer of Licenses shall be entitled to retain out of the moneys received by him for licenses the sum of six per centum, and the residue thereof he shall pay to the Treasurer of Ontario, in such manner as the said Treasurer shall from time to time direct.

Licenses, how issued.

**8.** Every license shall be issued by the issuer of licenses for the County, City, Riding or Municipality in which the tavern, shop, warehouse or other place to which the license is to apply shall be situate, except in the case of licenses for

Vessel licenses.

vessels, which may be issued by any issuer of licenses without any certificate or any of the terms, conditions or formalities required in other cases: Provided always, that

Licenses to be kept exposed.

all licenses shall be constantly and conspicuously exposed in the warehouses, shops or in the bar-room of taverns, inns, ale-houses, beer-houses or other places of public entertainment, and in the bar-saloon or bar-cabin of vessels, under a

Penalty on non-exposure.

penalty of five dollars for every day's wilful or negligent omission so to do, to be recovered with costs from the merchant, shopkeeper or tavern, inn, ale-house or beer-house keeper, or keeper of any other place of public entertainment, or master, captain or owner of the vessel so making default.

Council and police commissioners may make by-laws.

**9.** In the respective Municipalities in which the sale of intoxicating liquors and the issue of licenses therefor is not prohibited under the provisions of the Temperance Act of 1864, it shall be the duty of the Council of the Township, Town and Incorporated Village, and of the Commissioners of Police in Cities, to pass By-laws in the month of February in each and every year, and which shall not be altered or repealed during the year from the first day of March following:

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1. For defining the conditions and qualifications requisite for granting certificates to obtain tavern licenses for the retail, within the Municipality, of spirituous, fermented or other manufactured liquors, and also shop licenses for the sale, by retail, within the Municipality, of such liquors in shops, or places other than taverns, inns, ale-houses, beer-houses or places of public entertainment; For granting tavern and shop license certificates.

2. For declaring the terms and conditions required to be complied with by an applicant for a tavern license, and the security to be given by him for observing the same; Terms and conditions.

3. For declaring the security to be given by an applicant for a shop license, for observing the By-laws of the Municipality; Security.

4. For limiting the number of tavern and shop licenses respectively, and for defining the respective times and localities within which and the persons to whom such limited number may be issued within the year, from the first day of March of one year till the first day of March of the next year; Limiting number of licenses, &c.

5. For declaring that in Cities a number not exceeding ten persons, and in Towns a number not exceeding four persons, qualified to have a tavern license, may be exempted from the necessity of having all the tavern accommodation required by law; Exemption from having accommodation.

6. For regulating the taverns and shops to be licensed;

7. For determining the sums to be paid to the Municipality in respect of taverns and shop licenses respectively; Determining fee for licenses.

8. For appointing annually one or more fit and proper persons other than any issuer of licenses, to be inspector or inspectors of licenses, and for filling any vacancy in such office; Appointment of inspectors;

9. For fixing and defining the duties, powers and privileges of the inspector or inspectors so appointed; the remuneration he or they shall receive, and the security to be given for the efficient discharge of the duties of the office of inspector. their duties and remuneration.

**10.** The Clerk of every Township, Incorporated Village and Town, and the Police Commissioners in every City shall, on or before the last day of February in each year, deliver to the issuer of licenses for the County, City, Riding or Municipality, in which such Municipality is situate, a certificate under his or their hand, stating and showing the number of tavern and shop licenses which are authorized by Certificate of number of licenses issuable to be furnished to issuer.

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the By-law in that behalf to be issued for the then next ensuing year, and the respective times and localities within which and the persons to whom such number may be issued; and any such Clerk or Police Commissioners neglecting, omitting or refusing to deliver such certificate by the time aforesaid, shall incur a penalty of not less than forty dollars, nor more than one hundred dollars.

Penalty for neglect.

Issuer not to issue a greater number.

**11.** The issuer of licenses for each County, City, Riding or Municipality, as the case may be, shall not issue a greater number of tavern and shop licenses in any County, City, Riding or Municipality, than is named in such certificate or certificates, as the case may be, and only at the respective times, and for the localities within which and the persons to whom such number may be issued.

*Obtaining Licenses.*

Accommodation required.

**12.** Every tavern and inn, authorized to be licensed under the provisions of this Act, shall contain, and during the continuance of the license shall continue to contain, in addition to what may be needed for the use of the family of the tavern or inn-keeper, not less than four bed-rooms, together with, in every case, a suitable complement of bedding and furniture, and (except in Cities and Incorporated Towns) there shall also be attached to the said tavern or inn proper stabling for at least six horses; but the foregoing requirements shall not apply to such taverns as are licensed under the fifth sub-section of section nine of this Act; and, excepting in Townships, such tavern or inn shall form no part of, and shall not communicate by any entrance with any shop or store wherein goods or merchandise known as groceries or provisions are kept for sale.

No certificate to be granted except upon petition and report thereon.

**13.** A certificate for a license to sell spirituous, fermented or other manufactured liquors, by retail, in any tavern, ale-house, beer-house, place of public entertainment or shop, shall not be granted to any applicant, except upon petition by the applicant to the Council of the Township, Town, or Incorporated Village, and to the Commissioners of Police in Cities in which the license is to have effect, praying for the same: nor until the inspector, to be appointed as aforesaid, shall have reported in writing to the Police Commissioners, or to the Clerk of the Municipal Council (as the case may be), that the applicant is a fit and proper person to have a license, and has all the accommodation required by law: and every such report shall be duly filed by the Police

Report to be filed.

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Commissioners or Municipal Clerk respectively, and shall remain open to the inspection of any ratepayer of the Municipality or of any provincial officer; and the inspector shall not report in favour of any applicant other than the true owner of the business of the tavern or shop proposed to be licensed.

Cases in which certificates may be granted.

**14.** It shall be the duty of the Commissioners of Police in Cities, of the Mayor and Clerk in Towns, and Reeve and Clerk in Townships and Incorporated Villages, respectively, upon application of any person requiring a tavern or shop license, if it shall appear that such applicant is the true owner of the business of such tavern or shop, and has complied with the requirements of the law, and of the By-laws and regulations in force in the Municipality in that behalf, and is one of the persons designated in such By-law as entitled thereto, or is otherwise approved by the Police Commissioners or Council of the Municipality, as the case may be, to grant such applicant a certificate under his or their hand, stating that he is entitled to a license for a certain time, and for a certain tavern, inn, house or place of public entertainment, or shop within the Municipality to be mentioned in such certificate; and the said applicant shall forthwith take the said certificate to the issuer of licenses for the Municipality within which the said license is to have effect, and, on presentation thereof to the said issuer of licenses, and payment to him of the provincial duty thereon, the said issuer of licenses shall issue to such applicant a license: Provided always, that the said license shall be invalid, inoperative and of no effect until the said applicant shall have paid to the Treasurer of the said Municipality the sum also made payable therefor to the said Municipality, in manner in this Act provided, for the use of the said Municipality, and shall have obtained a receipt for such payment, signed by the said Treasurer, and endorsed on the said license; and it shall be the duty of the said Treasurer, on payment or tender to him of the money last aforesaid and the said license, to fill up and sign such receipt: Provided always further, that it shall not be lawful to grant any certificate for a license, or any certificate whatsoever, whereby any person can obtain or procure any license for the sale of spirituous, fermented or intoxicating liquors on the days of the exhibition of the Agricultural Association of Ontario, or of any County, Electoral Division, or Township Agricultural Society Exhibition, either on the

Mode of procedure for obtaining tavern licenses.

Proviso as to its not being granted for certain times and places.

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grounds of such society or within the distance of three hundred yards from such grounds.

Issue of licenses by wholesale.

**15.** The issuer of licenses for the Municipality in which the license applied for is to have effect shall issue to any applicant, upon a requisition therefor signed by him, and after payment to the issuer of the provincial duty thereon, a license for selling fermented, spirituous or other liquors by wholesale only, in his warehouse, store, shop or place to be defined in said license, and situate within the said Municipality, and which license shall be deemed "a license by wholesale" within the meaning and subject to the provisions of the fourth section of this Act: Provided always, that the said license shall be invalid, inoperative and of no effect until the said applicant shall have further paid to the Treasurer of the Municipality in which the said license is intended to take effect the sum of fifty dollars, for the use of such Municipallty, and shall have obtained a receipt for such payment, signed by the said Treasurer, and endorsed on the said license, and it shall be the duty of the said Treasurer, on payment or tender to him of the money last aforesaid, and the said license, to fill up and sign such receipt.

Proviso as to fee to treasurer of municipality.

Licenses to be such for purposes of provincial duty, &c.

**16.** Every license issued under this Act shall be a license for the purpose of the provincial duty, as well as for the sum to be payable to the Municipality therefor; and the sum paid for the license, over and above the provincial duty, shall be applied to the use of the Municipality within which is situate the tavern, inn, ale-house, beer-house, shop, warehouse, or other place in which such license is to have effect.

*Transfer of License.*

Transfers of licenses.

**17.** If any person, having lawfully obtained a license under this Act, before the expiration of his license, dies, or sells, or by operation of law or otherwise assigns his said business, or removes from the house or place in respect of which the said license applies, such person, his assigns or legal representatives may, with the consent of the issuer of licenses for the Municipality in which the said license has effect (such consent to be endorsed on said license), transfer such license to any other person who, under such transfer, may exercise the rights granted by such license, subject to all the duties and obligations of the original holder thereof, until the expiration thereof, in the house or place for which such license was issued and to which it applies, but in no other house or place: Provided always, that in every case of

Proviso.

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a tavern license, the person in whose favour any such transfer is to be made shall first produce to the said issuer of licenses a certificate similar to that mentioned in the thirteenth section of this Act, and which certificate it shall be the duty of the respective official persons therein mentioned to grant: And provided also, that such transfer shall be made within one month after the death, assignment or removal of the original holder of such license, and not afterwards. Proviso.

**18.** Any inspector of licenses may, in his discretion, but after resolution allowing the same of the Municipal Council or Commissioners of Police, as the case may be, having jurisdiction and subject to the approval of the issuer of licenses, endorse on any tavern or shop license permission to the holder thereof, or his assigns or legal representatives, to remove from the house to which his said license applies to another house to be described in an endorsement to be made by the said inspector on the said license, and situate within the same Municipality, and possessing all the accommodation required by law; and such permission, when the approval of the said issuer is endorsed on the said license, shall authorize the holder of the said license to sell the same liquors in the house mentioned in the endorsement during the unexpired portion of the term for which the said license was granted, in the same manner, and upon the same terms and conditions; and any bond or security which such holder of a license may have given for any purpose relative to such license, shall apply to the house or place to which such removal is authorized, but such permission shall not entitle him to sell at any other than this one place. Inspector of licenses may consent to removal of tavern keeper to another house.

*Regulations.*

**19.** Every person who keeps a tavern, inn, ale-house, beer-house, or other house or place of public entertainment, in respect of which a tavern license has duly issued and is in force, shall exhibit over the door of such tavern, inn, ale-house, beer-house, or other place of public entertainment, in large letters, the words "Licensed to sell wine, beer and other spirituous or fermented liquors," and, in default thereof, shall be liable to a penalty of five dollars besides costs. Tavern keepers to exhibit notice of being licensed. Penalty.

**20.** No person having a shop license to sell by retail shall allow any liquors sold by him or in his possession, and for the sale of which a license is required, to be consumed within his shop, or within the building which such shop forms part of, or which communicates by any entrance with Shop license not to authorize liquor sold to be consumed in the house.

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such shop, either by the purchaser thereof or by any other person not usually resident within such building, under a penalty of twenty dollars besides costs.

Penalty.

Liquor not to be consumed on premises of persons having license by wholesale.

**21.** No person having a license to sell by wholesale shall allow any liquors sold by him or in his possession for sale, and for the sale or disposal of which such license is required, to be consumed within his warehouse or shop, or within any building which forms part of or is appurtenant to, or which communicates by any entrance with, any warehouse, shop or other premises wherein any article to be sold or disposed of under such license is sold by retail, or wherein there is kept any broken packages of such articles.

*Duties Payable.*

Fees for licenses.

**22.** Over and above the sum which may be imposed by Municipalities, as by law provided, there shall be paid for each tavern license, to and for the use of Her Majesty (and forming part of the Consolidated Revenue Fund of this Province), in Cities, a duty of thirty dollars; in Towns, of twenty-five dollars; and in Townships and Incorporated Villages, of fifteen dollars; for vessels navigating the waters of this Province, of thirty dollars; for each shop license, by retail, in cities, of thirty dollars, in towns, of twenty-five dollars, and in Townships and Incorporated Villages, of fifteen dollars; for each license by wholesale, of fifty dollars; for each tavern license in any territory not under Municipal government, of fifty dollars; and for each shop license in any such territory, of forty dollars: Provided that for each tavern license mentioned in section nine, subsection five, the provincial duty shall be thirty-five dollars.

Proviso.

By-laws for sums to be paid in addition to provincial duty.

**23.** The sum to be paid for a tavern or shop license, in addition to the provincial duty mentioned in the last preceding section, shall be such a sum as shall be fixed by By-law of the Municipality, passed by the proper authority in that behalf, and, including the provincial duty, shall be in Cities, not less than eighty dollars for taverns and for shops; in Towns, not less than sixty dollars for taverns and for shops; and in Townships and Incorporated Villages, not less than thirty dollars for each tavern and shop license: Provided always, that for each tavern license mentioned in section nine, subsection five, the said sum in Cities shall not be less than one hundred dollars, and in Towns not less than eighty dollars; but no By-law by which a greater sum than one hundred and thirty dollars per annum is intended to be

Proviso.

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exacted for any tavern or shop license, or for leave to exercise any other calling, or to do any other thing for which a license may be required, shall have any force or effect, unless the By-law, before the final passing thereof, shall have been duly approved by the electors of the Municipality in the manner provided by the Municipal Act; and any By-law so passed shall not be varied and repealed unless the varying or repealing By-law shall have been, in like manner, submitted to and approved of by the electors of the said Municipality.

Certain by-laws to be approved by public vote, &c.

*Prohibitions.*

**24.** No person shall sell by wholesale or retail any spirituous, fermented or other manufactured liquors within the Province of Ontario without having first obtained a license under this Act authorizing him so to do: Provided that this section shall not apply to sales under legal process, or for distress, or sales by assignees in insolvency.

No person shall sell liquors without license.

**25.** No person shall keep or have in any house, building, shop, eating-house, saloon, or house of public entertainment, or in any room or place whatsoever, any spirituous, fermented or other manufactured liquors for the purpose of selling, bartering or trading therein, unless duly licensed thereto under the provisions of this Act.

Persons not to keep spirituous, &c., liquors for sale unless licensed.

**26.** The last two preceding sections shall not prevent any brewer, distiller, or other person duly licensed by the Government of Canada for the manufacture of fermented, spirituous or other liquors, from keeping, having or selling any liquor manufactured by him in any building wherein such manufacture is carried on, and which building forms no part of and does not communicate by any entrance with any shop or premises wherein any article authorized to be manufactured under such license is sold by retail, or wherein is kept any broken packages of such articles: Provided that any such brewer, distiller or other person is further required to first obtain a license to sell by wholesale, under this Act, the liquor so manufactured by him, when sold for consumption within this Province, and under which license the said liquor may be sold by sample or in original packages, in any Municipality, as well as in that in which it is manufactured, but so that no such sale shall be in quantities less than those prescribed in section four of this Act.

Last two preceding sections not to apply to brewers, &c.,

**27.** The said sections numbered twenty-four and twenty-five of this Act shall not prevent any chemist or druggist

nor to chemists.

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duly registered as such under and by virtue of the "Pharmacy Act of 1871," from keeping, having or selling liquors for strictly medicinal purposes, and then only in packages of not more than twelve ounces at any one time, except under certificate from a registered medical practitioner.

All places where intoxicating liquors sold to be closed from seven o'clock on Saturday night till six o'clock on Monday morning.

**28.** In all places where intoxicating liquors are, or may be, sold by wholesale or retail, no sale or other disposal of the said liquors shall take place therein, or on the premises thereof, or out of or from the same to any person or persons whomsoever from or after the hour of seven of the clock on Saturday night till six of the clock on Monday morning thereafter, and during any further time on the said days, and any hours or other days during which, by any statute in force in this Province, or by any By-law in force in the Municipality wherein such place or places may be situated, the same, or the bar-room or bar-rooms thereof, ought to be kept closed, save and except in cases where a requisition for medical purposes, signed by a licensed medical practitioner, or by a Justice of the Peace, is produced by the vendee or his agent; nor shall any such liquor be permitted or allowed to be drunk in any such places during the time prohibited by this Act for the sale of the same.

Exception.

Sale of liquors from ships in port prohibited.

**29.** Where a license is issued, under this Act, to authorize the sale of liquors upon any vessel navigating any river, lake or water in this Province, no sale or other disposal of liquor shall take place thereon or therefrom, to be consumed by any person other than a passenger on the said vessel, whilst such vessel is at any port, pier, wharf, dock, mooring, or station; and in case any such sale or other disposal of liquor shall take place, the said license shall *ipso facto* be and become forfeited and absolutely void, and the captain or master in charge of such vessel, and the owner or person navigating the same, as well as the person actually selling or disposing of liquor contrary to this section, shall be severally and respectively liable to pay to the Crown, for the public uses of this Province, the sum of one hundred dollars; and any person who may sell or dispose of any liquor contrary to the provisions of this section, shall also be liable to the same penalty and punishment therefor as are hereinafter prescribed in the thirty-fourth section of this Act.

Penalty.

*Penalties.*

Not lawful to take money for certificate, until license issued.

**30.** It shall not be lawful for the Commissioners of Police in Cities, or any of them, nor for any member of any Muni-

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cipal Council, nor for the Clerk, Treasurer, or any officer of such Municipality, either directly or indirectly, to receive, take or have any money whatsoever, for any certificate, matter or thing connected with or relating to any license, or the sum to be therefor paid to the said Municipality, or any part thereof, or to receive, take or have any note, security or promise for the payment of any such money or any part thereof, from any person or persons whatsoever, until and after the said license shall have been issued by the issuer of licenses in the manner aforesaid; and any person or persons guilty of or concerned in, or a party to any act, matter or thing contrary to the provisions of this section or of section fourteen of this Act, shall forfeit and pay to and for the use of Her Majesty a penalty of not less than fifty dollars, nor more than one hundred dollars, besides costs, for every such offence. Penalty.

**31.** Any member of a Municipal Corporation, or officer or other person who shall, contrary to the provisions of this Act, knowingly vote or issue, or cause or procure to be issued, a certificate for a tavern or shop license, shall, upon conviction thereof, for each offence pay a fine of not less than forty dollars, nor more than one hundred dollars, and in default of payment of such fine, the offender or offenders may be imprisoned in the County gaol of the County in which the conviction takes place for a period not exceeding three calendar months. Penalty for issuing any certificates contrary to this Act.

**32.** If any officer of any Municipal Corporation shall be convicted of any offence under this Act, he shall thereby forfeit and vacate his office, and he shall be disqualified to hold any office in any Municipality in this Province for two years thereafter. Forfeiture of office by municipal officer if convicted.

**33.** If any member of any Municipal Council shall be convicted of any offence under this Act, he shall thereby forfeit and vacate his seat, and shall be ineligible to be elected to or to sit or vote in any Municipal Council for two years thereafter; and if any such person, after the forfeiture aforesaid, shall sit or vote in any Municipal Council, he shall incur a penalty of forty dollars for every day he shall so sit or vote. Forfeiture of office by member of council if convicted. Penalty.

**34.** For punishment of offences against section twenty-eight of this Act, a penalty for the first offence against the provisions thereof, of not less than twenty dollars with costs, or fifteen days' imprisonment with hard labour, in case of conviction, shall be recoverable from, and leviable against, Penalty for contravention of sec. 28.

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the goods and chattels of the person or persons who are the proprietors in occupancy, or tenants or agents in occupancy of the said place or places, who shall be found by himself, herself or themselves, or his, her or their servants or agents, to have contravened the enactment in the said twenty eighth section or any part thereof; for the second offence, a penalty against all such of not less than forty dollars with costs or twenty days' imprisonment with hard labour; for a third offence, a penalty against all such of not less than one hundred dollars with costs or fifty days' imprisonment with hard labour; and for a fourth or any after offence, a penalty against all such of not less than one nor more than three months' imprisonment with hard labour in the common gaol of the County wherein such place or places may be; the number of such offences to be ascertained by the production of a certificate under the hand of the convicting Justice, or by other satisfactory evidence to the Justice before whom the information and complaint may be made; and it is hereby enacted that convictions for several offences may be made under this Act, although such offences may have been committed in the same day: Provided always, that the increased penalties hereinbefore in this section imposed shall only be recoverable in the case of offences committed on different days.

Proviso.

Penalty for selling without license.

**35.** Any person who shall sell or barter spirituous, fermented or manufactured liquors of any kind, or intoxicating liquors of any kind, without the license therefor by law required, shall, for the first offence, on conviction thereof, forfeit and pay a penalty of not less than twenty dollars besides costs and not more than fifty dollars besides costs; and for the second offence, on conviction thereof, such person shall be imprisoned in the county gaol of the County in which the offence was committed, to be kept at hard labour for a period not exceeding three calendar months; and for the third and any after offence, on conviction thereof, such person shall be imprisoned in the county gaol of the County in which the offence was committed, to be kept at hard labour for a period of not less than one nor more than three calendar months; and the number of convictions may be ascertained by the production of a certificate under the hand of the convicting Justice or by other satisfactory evidence.

Keepers of disorderly inns subject to certain penalties.

**36.** The Mayor or Police Magistrate of a Town or City, or the Reeve of a Township or Village, with any one Justice of the Peace or any two Justices of the Peace having juris-

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diction in the Township or Village, upon complaint made on oath to them or one of them respectively, that any keeper of any inn, tavern, ale-house, beer-house, or other house of public entertainment, situated within their jurisdiction, sanctions or allows gambling or riotous or disorderly conduct in his tavern or house, may summon the keeper of such inn, tavern, ale or beer-house to answer the complaint, and may investigate the same summarily, and either dismiss the complaint with costs to be paid by the complainant, or convict the keeper of having an improper or a riotous or disorderly house, as the case may be, and annul his license, or suspend the same for not more than sixty days, with or without costs, as in his or their discretion may seem just; and in case the keeper of any such inn, tavern, ale-house, beer-house, or place of public entertainment, shall be convicted under this section, and his license annulled, he shall not be eligible to obtain a license for the period of two years thereafter.

Power of county judge as to licenses improperly obtained or licensee convicted.

**37.** The Judge of the County Court of the County in which the Municipality is situate, wherein the license complained of is intended to take effect, upon the complaint of any person that such license has been issued contrary to any of the provisions of this Act or of any By-law in force in the said Municipality, or that such license has been obtained by any fraud, or that the person licensed has been convicted on more than one occasion for any violation of the provisions of the thirty-sixth section of this Act, or has been convicted for the fourth or any after offence under the twenty-eighth section of this Act, shall summon the person to whom such license issued to appear, and shall proceed to hear and determine the matter of the said complaint in a summary manner, and may upon such hearing, or in default of appearance of the person summoned, determine and adjudge that such license upon any of the causes aforesaid ought to be revoked, and thereupon shall order and adjudge that such license is and stands revoked and cancelled accordingly, and thereupon such license shall be and become inoperative and of none effect, and the person to whom such license issued, shall thereafter, during the full period of two years, be disqualified from obtaining any further or other license under this Act; and the said order and adjudication of the said Judge shall be final and conclusive, and shall not be the subject of appeal or revision by any Court whatever; or the said Judge may, in his discretion, dismiss the matter of the

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said complaint, with or without costs to be paid by the complainant.

Power of county judge as to inspectors neglecting their duties.

**38.** The Judge of the County Court of the County in which the Municipality is situate, in which any inspector or inspectors of licenses is or are appointed, upon complaint made by any person that any such inspector is guilty of wilfully neglecting to do or observe, or of wilfully doing any act, matter or thing contrary to his duty as such inspector, shall summon such inspector to appear, and shall proceed to hear and determine the matter of the said complaint, and upon such hearing, or in default of appearance of the said inspector, being duly summoned, may determine that such inspector is guilty of the matter complained of, and ought to be removed from his said office of inspector, and shall order the same accordingly, and thereupon such person shall no longer be inspector, and the Council or Police Commissioners, as the case may be, in the said Municipality, shall immediately appoint another inspector in his place; and the person so removed shall thereafter, for the full period of two years, be disqualified from being or becoming an inspector of licenses: and the said order and adjudication of the said Judge shall be final and conclusive, and shall not be the subject of appeal or revision by any Court whatsoever, or the said Judge may, in his discretion, dismiss the matter of the said complaint, with or without costs to be paid by the complainant.

Penalty in case any person shall compromise, compound or settle case.

**39.** Any person who, having violated any of the provisions of this Act, shall compromise, compound or settle, or shall offer or attempt to compromise, compound or settle the offence with any person or persons, with the view of preventing any complaint being made in respect thereof, or if a complaint shall have been made with the view of getting rid of such complaint, or of stopping or having the same dismissed for want of prosecution, or otherwise, shall be guilty of an offence under this Act, and, on conviction thereof, shall be imprisoned at hard labour in the common gaol of the County in which the offence was committed for the period of three calendar months.

Penalty for being concerned in any such compromise, &c.

**40.** Every person who shall be concerned in, or be a party to, the compromise, composition or settlement mentioned in the next preceding section shall be guilty of an offence under this Act, and, on conviction thereof, shall be imprisoned in the common gaol of the County in which the offence was committed, for the period of three calendar months.

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Penalties or punishments not to be remitted

**41.** No Police Magistrate or Justice or Justices of the Peace, Municipal Council or Municipal officer shall have any power or authority to remit or compromise any penalty or punishment inflicted under this Act.

Penalty for tampering with a witness.

**42.** Any person who, on any prosecution under this Act, tampers with a witness, either before or after he or she is summoned or appears as such witness on any trial or proceeding under this Act, or by the offer of money, or by threats, or in any other way, either directly or indirectly, induces or attempts to induce any such person to absent himself or herself, or to swear falsely, shall be liable to a penalty of fifty dollars for each offence.

Applications of penalties.

**43.** The penalties in money under this Act, or any portion of them which may be recovered, shall be paid to the convicting Justice or Justices in the case, and shall by him or them, in case any officer appointed by the Lieutenant Governor is the prosecutor or complainant, be paid to the Treasurer of Ontario, and in case such Provincial officer is not the prosecutor or complainant, then the same shall be paid to the Treasurer of the Municipality wherein the offence was committed; and for the recovery of the said penalties and legal costs, upon and after conviction in cases not appealable, and in cases appealable where an appeal has not been perfected according to law, it shall and may be lawful for any Justice or Justices to issue a warrant of distress to any constable or peace officer, against the goods and chattels of the person or persons convicted, and in case no sufficient distress be found to satisfy the said conviction, then, in cases not otherwise provided for by this Act, it shall and may be lawful for the said Justice or Justices to order that the person or persons so convicted be imprisoned in any common gaol within the County, or gaol or lock-up house, in which such conviction was made, for any period not exceeding thirty days, unless the penalty and all costs be sooner paid. The Council of any Municipality shall set apart not less than one-third part of such fines or penalties received by the said Municipality for a fund to secure the prosecutions for infractions of this Act, and of any By-laws passed in pursuance thereof.

Penalties and costs, how recoverable.

Municipalities to set apart a third.

*Proceedings and Evidence.*

Certain prosecutions to be before two or more justices or police magistrate.

**44.** All prosecutions for the punishment of the several offences against the provisions of this Act, contained in sections numbered respectively twenty-eight, twenty-nine,



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thirty, thirty-five and thirty-six, whether the prosecution be for the recovery of a penalty or for punishment by imprisonment, shall take place before any two or more of Her Majesty's Justices of the Peace having jurisdiction in the Municipality in which the offence is committed, or in Cities and Towns where there is a Police Magistrate, before the Police Magistrate, who, it is hereby declared, shall have authority to hear and determine the same in a summary manner according to the practice and procedure, and after forms contained in and appended to the Act chaptered one hundred and three of the Consolidated Statutes of Canada, intituled, An Act respecting the duties of the Justices of the Peace out of Sessions in relation to summary convictions and orders, and the Act or Acts amending the same; and on such trials and proceedings the prosecutor or complainant shall be a competent witness; and in all cases of prosecution for any offence against the provisions of the thirty-fifth section of this Act, the conviction or order of the said two or more Justices, or of the said Police Magistrate, as the case may be, shall be final and conclusive, and against such conviction or order there shall be no appeal to the Court of General Sessions of the Peace, or to any other Court, except as hereinafter mentioned, any statute, usage, custom or law to the contrary notwithstanding; and all prosecutions in this section mentioned shall be commenced within twenty days after the commission of the offence or after the cause of action arose, and not afterwards;

Conviction for sale without license may be appealed to county judge,

and prosecutions to be within twenty days.

Appeal from convictions for sale without license.

2. An appeal shall lie from a conviction had under the thirty-fifth section of this Act to the Judge of the County Court of the County in which the conviction is made sitting in Chambers, without a jury, within twenty days after the said conviction;

(*a*) The Justices of the Peace or the Police Magistrate, as the case may be, shall, in all cases of complaint under the said section of this Act, reduce to writing the whole of the evidence of the witnesses examined before them or him, and shall read the same over to the witnesses, who shall sign the same;

(*b*) At the request of the person convicted, the Justices of the Peace or Police Magistrate who have or has convicted, upon deposit made with them or him, of the amount of the penalty and the costs, and a further sum of ten dollars, shall, within five days after the date of the said conviction, transmit by registered letter, post-paid, all the proceedings and evidence to the Clerk of the County Court;

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(*c*) Within ten days after the date of the said conviction, if the Judge of the County Court be of opinion from the said evidence that the conviction may be erroneous, he may grant a summons calling upon the County Attorney and the prosecutor to show cause why the said conviction may not be quashed;

(*d*) Upon the return of the summons, the Judge may, upon hearing the parties, either affirm or quash the said conviction, or if he shall see fit may hear the evidence of such other witness or witnesses, or the further evidence of any witness already examined, and may then make an order affirming or quashing the said conviction as he may think just, and may order the payment of costs, and shall fix the amount thereof;

(*e*) Upon production of the Judge's order, the Justices of the Peace or Police Magistrate who have convicted shall issue their or his warrant for payment of such further sum for costs, as the sum deposited with them or him is insufficient to pay; if the conviction be quashed, the Judge shall order a return of the money so deposited; and shall order payment of such sum for costs as he may tax and order, and unless the sum be paid by the complainant the Justices or Police Magistrate may issue their or his warrant to levy the costs;

(*f*) The Judge shall have as full a power to correct and amend any formal objection in the conviction as he would have to amend any proceeding in a civil cause in the County Court.

All other prosecutions may be before one or more justices or a police magistrate.

**45.** All prosecutions under this Act, other than those mentioned in the next preceding section, whether for the recovery of a penalty or otherwise, may be brought and heard before any one or more of Her Majesty's Justices of the Peace in and for the County where the forfeiture took place, or the penalty was incurred, or the offence was committed or wrong done, and in Cities and Towns in which there is a Police Magistrate, before the Police Magistrate; and the procedure shall be that of Justices out of Sessions in relation to summary convictions and orders; and all prosecutions provided for under this section shall be commenced within two months after the commission of the offence or the cause of action arose, and not afterwards.

Mode of procedure.

Prosecutions to be commenced within two months.

Appeal from convictions other than sale without license.

**46.** In all cases of prosecutions for any offence against any of the provisions of this Act, other than those contained

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in the said thirty-fifth section, an appeal shall lie from any order or conviction, in the same manner and to the same extent as is provided in and by the said Act, chaptered one hundred and three of the Consolidated Statutes of Canada respecting summary convictions.

Any person may be prosecutor, &c.

Witness.

**47**. Any person may be prosecutor or complainant in prosecutions under this Act; and no person shall be rendered incompetent as a witness by reason of his being interested in any portion of the penalty sought to be recovered.

By-laws by police commissioners in cities may have penalties attached thereto, &c.

**48**. In all cases where the Board of Police Commissioners in Cities are authorized to make By-laws either under this or any other Act or law, they shall have power in and by such By-laws to attach penalties for the infraction thereof, to be recovered and enforced by summary proceedings before the Police Magistrate of such City for which the same may be passed, or, in his absence, before any Justice of the Peace having jurisdiction therein, in the manner and to the extent that By-laws of City Councils might be enforced under the authority of the Municipal Institutions Act; and the convictions in such proceedings may be in the form set forth in the said Act.

How such by-laws authenticated, &c.

**49**. All By-laws of such Board of Police Commissioners shall be sufficiently authenticated by being signed by the Chairman of such Board, who shall pass the same; and a copy of any such By-law, written or printed, and certified to be a true copy by any member of such Board, shall be deemed authentic, and be received in evidence in any Court of justice without proof of any such signature, unless it is specially pleaded or alleged that the signature to any such original By-law has been forged.

Places in which the sale of liquors is presumed.

Presumption as to occupant.

**50**. Any house, shop, room or other place in which are proved to exist a bar, counter, beer-pump, kegs, jars, decanters, tumblers, glasses or any other appliances or preparations similar to those usually found in taverns or shops where spirituous or fermented liquors are accustomed to be sold or trafficked in, shall be deemed to be a place in which spirituous, fermented or other manufactured liquors are sold under the twenty-fifth section of this Act, unless the contrary is proved by the defendant in any prosecution; and the occupant of such house, shop, room or other place shall be taken conclusively to be the person who has, or keeps therein, such liquors for sale, barter or traffic therein.

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Persons or lights in bar-rooms at prohibited times, when so proved, to be *prima facie* evidence of illegal sale of liquor.

**51.** In Cities, Towns and Incorporated Villages, in all cases where any person or persons, other than members of the family or household of the keeper of a licensed tavern or saloon, is or are found frequenting or present, or gas or other light is seen burning in the bar-room of such tavern or saloon where liquor is trafficked in, at any time during which the sale or other disposal of liquors is prohibited by any provision of this Act, any such fact, when proved, shall be deemed and taken as *prima facie* evidence that a sale or other disposal of liquors by the keeper of such tavern or other place has taken place contrary to the provisions of the twenty-eighth section of this Act; and such keeper may thereupon be convicted of an offence against said section, and shall, upon conviction, be subject to the punishment prescribed in and by the thirty-fourth section of this Act.

Liability of occupants.

**52.** The occupant of any house, shop, room or other place in which any sale, barter or traffic of spirituous, fermented or manufactured liquors, or any matter, act or thing, in contravention of any of the provisions of this Act, has taken place, shall be personally liable to the penalty and punishments prescribed in the thirty-fourth and thirty-fifth sections of this Act, as the case may be, notwithstanding such sale, barter or traffic be made by some other person, who cannot be proved to have so acted under or by the directions of such occupant.

Proof of being licensed to rest on the defendant.

**53.** In any prosecution under this Act, whenever it appears that the defendant has done any act or been guilty of any omission in respect of which, were he not duly licensed, he would be liable to some penalty under this Act, it shall be incumbent upon the defendant to prove that he is duly licensed, and that he did the said act lawfully; and the production of a license which on its face purports to be duly issued, and which, were it duly issued, would be a lawful authority to the defendant for such act or omission, shall be *prima facie* evidence that the defendant is so entitled, and in all cases the signature to and upon any instrument purporting to be a valid license shall *prima facie* be taken to be genuine.

Evidence of license.

*Officers to Enforce the Law, and their Duties.*

Appointment of officers to enforce this Act.

**54.** The Lieutenant-Governor may appoint one or more provincial officers, whose duty it shall be to enforce the observance of the provisions of this Act; and the Council of every County, Township, Town and Incorporated Village,

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and the Commissioners of Police in each City, shall, some time in the month of February in each year, appoint an officer or officers for the Municipality, for the like purposes, and for the observance and enforcement of any By-law of the Municipality, with respect to tavern and shop licenses, and shall fix and define the duties, powers and privileges of the officer or officers so appointed, the remuneration he or they shall receive, and the security to be given for the efficient discharge of the duties of the said office.

Officers within this Act.

**55.** Any provincial officer, or any police officer or constable, or inspector of licenses, shall be deemed to be within the provisions of this Act; and when any information is given to such officer that there is cause to suspect that some person is violating any of the provisions of this Act, it shall be the duty of such officer to make diligent inquiry into the truth of such information, and enter complaint of such violation before the proper Court, without communicating the name of the person giving such information; and it shall be the duty of the County Attorney within the County in which the offence is committed, to attend to the prosecution of all cases committed to him by the provincial officer.

Duties of officers and county attorneys on receiving information of infringement of this Act.

Right of constables and officers to enter taverns, &c.

**56.** Any provincial officer, police officer or constable, or inspector of licenses, may, at any time, enter into any tavern, inn, ale-house, beer-house, or other house or place of public entertainment, or into any shop, warehouse or other place wherein refreshments or liquors are sold or reputed to be sold, whether under license or not; and any person being therein, or having charge thereof, who refuses, or after due summons fails to admit such provincial or police officer, or constable, or inspector, into the same, or offers any obstruction to his admission thereto, shall be liable to a penalty of not less than ten dollars, nor more than fifty dollars for every such offence.

Duty of constables and others to prosecute offenders.

**57.** It shall be the duty of every police officer, or constable, or inspector of licenses in each Municipality, to see that the several provisions of this Act are duly observed, and to proceed by information, and otherwise prosecute for the punishment of any offence against the provisions of this Act; and in case of wilful neglect or default in so doing in any case, such police officer, constable or inspector shall incur a penalty of ten dollars for each and every such neglect and default.

Penalty for neglect.

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Provisions as to harbouring constables on duty.

**58.** Any person licensed to sell wine, beer or spirituous liquors, or any keeper of any house, shop, room or other place for the sale of liquors, who shall knowingly harbour or entertain any constable belonging to any police force, or suffer such person to abide or remain in his shop, room or other place during any part of the time appointed for his being on duty, unless for the purpose of quelling any disturbance, or restoring order, or otherwise in the execution of his duty, shall, for any of the offences aforesaid, be deprived of his license.

*Territorial Districts.*

This Act to apply to the territorial and unorganized districts.

**59.** The several provisions of this Act shall apply to the territorial and unorganized districts of this Province; and in any prosecution or proceeding thereunder the Stipendiary Magistrate in any such district shall possess and exercise all the powers and jurisdictions of the Mayor, Police Magistrate, or other convicting Justice or Justices of the Peace under this Act; and any money penalty imposed and recovered shall be paid to the Treasurer of Ontario; and the lock-up of such district shall be deemed to be a gaol for the purpose of imprisonment under this Act; and the provisions of this Act, applicable to Townships, shall apply to all Municipalities organized under the Acts providing for the establishment of Municipal institutions in various territorial districts.

Issue of licenses for places not within a municipality.

**60.** The licenses to be issued for the sale of spirituous, fermented or other manufactured liquors, in any place not within a Municipality, may be issued on such conditions and under such regulations as the Lieutenant-Governor in Council may from time to time direct, subject to the provisions of this Act; and any bond which the Lieutenant-Governor in Council may direct to be taken from any person obtaining a license under this Act, for any such place conditional for the observance of the law, and of all regulations to be made under this section, shall be valid, and may be enforced according to its tenor.

*Repealing Clause.*

32 V., c. 32; 33 V., c. 28; and 36 V., c. 34, repealed.

**61.** The several Acts in the recital hereof mentioned are hereby repealed, but the repeal thereof shall not revive any Act or provision of law by them repealed, or prevent the effect of any saving clause therein, or the application of any such Acts or of any provision therein formerly in force to any transaction, matter or thing anterior to the said repeal, and to which they would otherwise apply; and any By-law

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By-laws enacted under their provisions to remain in force until others are passed.

enacted under any of the provisions of the said recited Acts or any of them, and in force in any Municipality at the time of the passing of this Act, shall remain and continue in full force and effect until another By-law having relation to the same subject matter shall be enacted by the proper authority in that behalf, under the provisions of this Act.

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# ADDITIONS AND CORRECTIONS.

*(The additions and corrections following should, if possible, be noted in the work before use.)*

Page 62, note *a*, line 12, *after* "*The Queen* v. *Tugwell*, L. R. 3 Q. B. 704," *add* "*The Queen* v. *Harrald*, L. R. 8 Q. B. 418."

Page 64, note *j*, line 8, *for* "6 Ven." *substitute* "6 Vin."

Page 83, at the end of note *l*, *add* "*Hardwick* v. *Brown*, L. R. 8 C. P. 406."

Page 84, note *n*, at the end of the third line, *add* "see further, *Hardwick* v. *Brown*, L. R. 8 C. P. 406."

Page 86, at the end of note *s*, *add* "see further, *Folkard* v. *Met. R. Co.*, L. R. 8 C. P. 470."

Page 144, note *a*, at the beginning, *for* "the money" *substitute* "the moneys."

Page 161, at the end of note *c*, *add* "There is a distinction between a gratuity and an annuity. See *Gibson* v. *East India Co.*, 5 Bing. N. C. 262; *Clarke* v. *Miss. Gas Co.*, 4 B. & Ad. 315; *Nines* v. *East India Co.*, 17 C. B. 351; *Marchant* v. *Lee Conservatory Board*, L. R. 8 C. P. 290."

Page 166, at the end of note *k*, *add* "*In re G. W. R. Co. and North Cayuga*, 23 C. P. 28."

Page 167, in text, *for* word "rade" *substitute* "trade."

Page 174, sec. 231, sub. s. 2, line 4, *erase* the word "the" and *substitute* "some."

Lines 5, 6, *erase* the words "and also in either case in a newspaper published," *before* the words "in the County Town;" also *erase* the words "if any such newspaper," *after* the words "in the County Town."

Page 175, s. 231, line 1, *erase* the words "each of," and for the word "paper" *substitute* "papers."

Note *p*, line 3, *erase* the word "the" and *substitute* "some."

Page 186, at the end of note *j*, *add* "see further, *In re McKinnon and Caledonia*, 33 U. C. Q. B. 502."

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Page 194, note *l*, *for* "resolutions," used in the third and fifth lines, *substitute* "restrictions."

Page 242, note *e*, at the end, *add* "nor to prevent a County Magistrate taking a recognizance in an election case. *In re Hamilton*, 10 Can. L. J. N. S. 170."

Page 278, note *d*, at the end, *add* "A public officer suffering loss through the failure of the Municipal Council to provide him proper office accommodation, has an action against the Municipal Corporation. *Lees* v. *Carleton*, 33 U. C. Q. B. 409."

Page 288, note, line 16, *after* "*Orford* v. *Bailey*, 12 Grant, 276," *add* "see further, *Brown* v. *McNab*, 20 Grant, 179."

Page 319, note *w*, line 13, *after* the word "footing," *add* "see *Buchanan* v. *Young*, 23 C. P. 101; *Gillson* v. *North Grey R. Co.*, 33 U. C. Q. B. 128."

Page 343, note *b*, at the end, *for* "6 H. & W. 667," *substitute* "6 H. & N 667."

Note *c*, line 6, *after* "17 N. Y. 449," *add* "*Attorney-General* v. *Cambridge*, L. R. 6 H. L. C. 303."

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